

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1482

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1482

UNITED STATES OF AMERICA,

Appellee,

—against—

ROBERT LOEWINGER, et al.,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR APPELLANT

LOUIS R. ROSENTHAL
Attorney for Appellant Loewinger
16 Court Street
Brooklyn, New York 11241
(212) 855-2600



I N D E X

	<u>PAGE</u>
Docket Entries-----	A-1
Indictment-----	A-3
Affidavit of Agent Amaditz-----	A-12
Order of Judge Griesa-----	A-53
Defendant Loewinger's Notice of Motion-----	A-59
Government's Affidavit in Opposition-----	A-63
Memorandum Decision of Judge Cannella-----	A-81
Plea Minutes-----	A-91
Sentence Minutes-----	A-127

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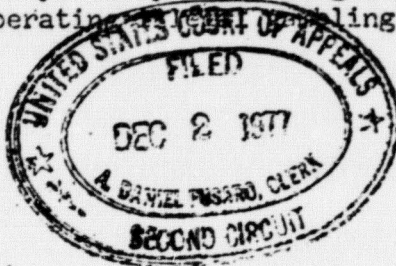
WILNER, ROBERT
a/k/a "Bobby"
a/k/a "Goo Goo"

06 03 77 0426 01

18:371
18:1955

OFFENSES CHARGED
Consp. to operate illegal gambling business
Operating illegal gambling business

1
2



SUPERSEDED
COUNTS

BAIL - RELEASE

Disposition of Charges
10-14-77
11-29-77
On All Charges
On Lesser Offense(s)
On Government's Motion

II. KEY DATES & INTERVALS

ARREST or U.S. Control, began
Summons Served
First Appearance
INDICTMENT
High Risk Date
Information
6-3-77
Indict. Waived
Superseding
Indict/Info
ARRAIGNMENT
6-9-77
1st Plea
6-9-77
Final Plea
10-14-77
TRIAL
Trial Set For
10-11-77
Voor Dire
Trial Began
Trial Ended
SENTENCE
11-29-77

MAGISTRATE

DATE
INITIAL NO.
INITIAL APPEARANCE DATE
INITIAL NO.
OUTCOME

T. Gorman Reilly
791-1127

John Avellino

249

Fenster-08, Adamiak-09, DeMase-10, Fine-11
Wertheimer-02, Leventhal-03, Finerow-04, Rrielich-05, Putzer-06, Melavsky-07

- 6-3-77 Filed Indictment.....Bryan, J.
- 6-9-77 Deft. (atty. John Avellino present) pleads not guilty. Bail fixed at \$10,000 unsecured PRB with PSA supervision. Bail limits extended to SDNY and Pa. Case assigned to Cannella, J. for all purposes.....Briant, J.
- 6-9-77 Filed appearance bond in amt. of \$10,000 unsecured..
- 6-13-77 Filed notice of appearance by Guy T. Parisi 32 Court St. Bklyn, N.Y. 11201 834-8374....
- 7-1-77 Filed Order re: 12-30-77 order of Griesa, J. - - The Govt shall produce to each deft copies of the pertinent court Order and application, etc as indicated. GRIESA, J -notified US Atty.
- 7-1-77 Filed Order re: 3-9-77 order of VanPelt Bryan, J. - - The Govt shall produce to each deft copies of the court Order and application, etc. as indicated. GRIESA, J -notified US Atty.

CONTINUED ON PAGE 2.

R. Loewinger

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUSION OF DELAY

DOCUMENT NO.

CANNELLA, J

2 DEFT (atty present) PTC HELD AND ADJOURNED TO 7-27-77 at 10AM
R.601. Trial on 10-11-77 at 10AM R.2704.
BAIL CONTINUED. CANNELLA, J

3-7-8-77 E-1

7-27-77 Filed deft's affidavit and notice of motion for an order
suppressing evidence derived from Electronic Surveillance
Order, etc. etc. (no return date)

7-27-77 Filed deft's Memorandum of law in support of motion to suppress
evidence acquired by interception of Telephonic Communication.

7-27-77 Filed deft's brief

9-14-77 Filed Govts affdvt. in opposition to motions to suppress wiretaps.

9-14-77 Filed Govts memorandum in ~~xxx~~ opposition to motions to suppress
wiretap...

09-23-77 Filed Govt's Affidavit in opposition to miscellaneous pretrial
motions made by various depts, other than motions to suppress
wiretap evidence, etc. by Kenneth V. Handal, AUSA

10-7-77 Filed memorandum decision motions to suppress the contents of
intercepted wire communications are denied****Cannella, J... m/n

10-14-77 Deft. & atty. present... W/D plea of not guilty and Pleads
Guilty to count 2 only... P.S.I. ordered... Sent. 11-29-77...
Cannella, J.,

11-18-77 Filed Govt's sentencing memorandum.

11-29-77 Filed Judgment (Atty. R. Rosenkranz, present) The deft is committed
for imprisonment for a period of TWO YEARS on count 2. Deft. is
Fined \$20,000.00 on count 2. Committed fine. Count 1 is dismissed
on motion of depts counsel with the consent of the Govt... Bail
pending appeal..... Cannella, J.... Entered 11-30-77....

11-30-77 Issued commitment and copies....

12-01-77 Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from
Judgment filed on: 11-29-77. copy mailed to:
Louis R. Rosenkranz, 16 Court St. Bklyn. NY 11241 as
atty for Appellant and copy to U.S. Atty.

3-10-7-77 F-30

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

/a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

INDICTMENT

77 Cr.

ROBERT LOEWINGER a/k/a "Bobby",
a/k/a "Goo Goo", NORMAN WERTHEIMER
a/k/a "Normie", SAM LEVENTHAL
a/k/a "Sam the Cop", HARRY FINEROW,
LEWIS A. FRIELICH a/k/a "Larry",
LAWRENCE PUTZER a/k/a "Larry",
MORRIS MELAVSKY a/k/a "Moe",
MAC FENSTER, RAY ADAMIAK,
WILLIAM DE MASE a/k/a "Bill", and
LESTER FINE a/k/a "Les",

Defendants.

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1976, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo", NORMAN WERTHEIMER a/k/a "Normie", SAM LEVENTHAL a/k/a "Sam the Cop", HARRY FINEROW, LEWIS A. FRIELICH a/k/a "Larry", LAWRENCE PUTZER a/k/a "Larry", MORRIS MELAVSKY a/k/a "Moe", MAC FENSTER, RAY ADAMIAK, WILLIAM DE MASE a/k/a "Bill", and LESTER FINE a/k/a "Les", the defendants, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree, together and with each other, and with diverse other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1955.

2. It was part of said conspiracy that said defendants and co-conspirators would unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports and race horse betting gambling business (a) which was a violation of the laws of the State of New York, to wit, Penal Law, Sections 225.05 and 225.10, and (b) which involved five or more

persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) which was and remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of substantially in excess of two thousand dollars (2,000) in any single day.

3. Among the means whereby the defendants carried out the conspiracy were the following:

a. the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo", NORMAN WERTHEIMER a/k/a "Normie", HARRY FINEROW, and MORRIS MELAVSKY a/k/a "Moe", controlled, directed, managed and supervised the illegal gambling business which operated at various locations in and around Monticello, New York, Kiamesha Lake, New York, Ellenville, New York, Bronx County, New York and Staten Island, New York;

b. the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie", operated, conducted and managed wire rooms in the premises of 14 Burton Avenue, Monticello, New York and in the premises of Bungalow #6, Nob Hill Bungalow Colony, Kiamesha Lake, New York, which wire rooms were a part of the illegal gambling business;

c. the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie", established and used a telephone answering service in Monticello, New York for the purpose of receiving bets and line or point spread information and for the purpose of concealing the location and telephone numbers of their wire rooms;

d. the defendant SAM LEVENTHAL a/k/a "Sam the Cop", operated, conducted and managed a series of wire rooms at various and successive locations in Sullivan County, New York, including Room 74, Floridian Building, Delano Motor Lodge, Old Liberty Road, Monticello, New York, New York.

e. the defendant SAM LEVENTHAL a/k/a "Sam the Cop", relayed all bets he received at his various wire rooms to the defendants, ROBERT LOEWINGER a/k/a "Bobby" a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie" at their room.

f. the defendants HARRY FINEROW, MORRIS MELAVSKY a/k/a "Moe", LEWIS A. FRIELICH a/k/a "Larry" and LAWRENCE PUTZER a/k/a "Larry" operated, conducted and managed a wire room at Apartment 29B, Country Club Arms Apartment, Nevela Road, Ellenville, New York, which wire room was a part of the illegal gambling business;

g. the defendant MORRIS MELAVSKY a/k/a "Moe" operated, conducted and managed a separate wire room at his residence, 16 Sandra Street, Ellenville, New York, which wire room was a part of the illegal gambling business;

h. the defendants WILLIAM DE MASE a/k/a "Bill" and LESTER FINE a/k/a "Les" operated, conducted and managed a wire room in the premises of Apartment 5-F, 749 East 231st Street, Bronx, New York, which wire room was a part of the illegal gambling business;

i. the defendant MAC FENSTER received sports and race horse bets and in the course of his participation in the illegal gambling business, relayed these bets to the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie" at their wire room;

j. the defendant RAY ADAMIAK received sports and race horse bets and, in the course of his participation in the illegal gambling business, relayed these bets to SAM LEVENTHAL a/k/a "Sam the Cop" at his wire room which bets in turn were relayed by the defendant SAM LEVENTHAL, a/k/a "Sam the Cop" to the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie" at their wire room;

k. the wire rooms, including those specified herein, cooperated with and assisted each other in the operation of the illegal gambling business by:

(i) accepting sports and race horses wagers from individual bettors not named herein who would telephone the various wire rooms or the answering service maintained by the defendants LOEWINGER and WERTHEIMER to place their bets;

(ii) exchanging information concerning odds (commonly known as the "line") on sporting events;

(iii) relaying and advising each other of recent betting results;

(iv) placing and receiving large wagers with each other so that no single wire room would be exposed to a large loss (commonly known as "laying off");

(v) reviewing amounts of money owed to or by bettors or other participants in the illegal gambling business (commonly known as the "pay and collect") as a result of their betting activity.

1. some or all of the defendants would, on a weekly basis, collect the losses from and pay the winnings to individual bettors doing business with their respective wire rooms (commonly known as the "settle up"); the defendant HARRY FYNROW would travel to the area of Scranton, Pennsylvania on a weekly basis to collect the losses from and pay the winnings to individual bettors; in addition the defendants would settle up with each other on a weekly basis.

m. all of the defendants and their co-conspirators shared in the proceeds of the illegal gambling business, which exceeded \$150,000 in gross wagers each week.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed the following overt acts in the Southern District of New York and elsewhere:

1. On or about August 30, 1976 the defendant SAM LEVENTHAL a/k/a "Sam the Cop" was on the premises of Kesselman's Bungalow Colony, Forestburgh Road, Monticello, New York.

2. On or about September 1, 1976 the defendants LEWIS A. FRIELICH a/k/a "Larry" and MORRIS MELAVKSY a/k/a "Moe" were together in the premises of 16 Sandra Street, Ellenville, New York

3. On or about December 3, 1976 the defendants HARRY FINEROW and LEWIS A. FRIELICH a/k/a "Larry" were together in the premises of Apartment 29B, Country Club Arms apartments, Nevele Road, Ellenville, New York.

4. On or about December 12, 1976 the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER were together on the premises of the Nob Hill Bungalow Colony, Kiamesha, New York.

5. On or about January 5, 1977 the defendant NORMAN WERTHEIMER a/k/a "Normie" placed a call to telephone number 914-794-3244 and had a conversation.

6. On or about January 5, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a call to telephone number 914-794-3244 and had a conversation.

7. On or about January 5, 1977 the defendant MORRIS MELAVSKY a/k/a "Moe" placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH a/k/a "Larry".

8. On or about January 6, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

9. On or about January 6, 1977 the defendant RAY ADAMIAK placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

10. On or about January 8, 1977 the defendant NORMAN WERTHEIMER a/k/a "Normie" placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

11. On or about January 9, 1977 the defendant RAY ADAMIAK placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

12. On or about January 9, 1977 the defendant NORMAN WERTHEIMER a/k/a "Normie" placed a telephone call to and had a conversation with the defendant HARRY FINEROW.

13. On or about January 14, 1977 the defendant LAWRENCE PUTZER a/k/a "Larry", placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH, a/k/a "Larry".

14. On or about March 9, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

15. On or about March 9, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant MAC FENSTER.

16. On or about March 9, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH a/k/a "Larry".

17. On or about March 10, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby" a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH a/k/a "Larry".

18. On or about March 11, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant LESTER FINE a/k/a "Les".

19. On or about March 19, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant MAC FENSTER.

20. On or about March 13, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby" a/k/a "Goo Goo" placed a telephone call to and had a conversation with a person known as "Star".

21. On or about March 16, 1977 the defendant ROBERT LOEWINGER, a/k/a "Bobby" a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant WILLIAM DE MASE a/k/a "Bill".

22. On or about March 17, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a telephone conversation with the defendant LESTER FINE a/k/a "Les."

23. On or about March 19, 1977 the defendant NORMAN WERTHEIMER a/k/a Normie placed a telephone call to and had a conversation with the defendant MAC FENSTER.

24. On or about March 21, 1977 the defendant ROBERT LOEWINGER a/k/a Bobby, a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant NORMAN WERTHEIMER a/k/a "Normie".

25. On or about March 23, 1977 the defendants WILLIAM DE MASE a/k/a "Bill" and LESTER FINE a/k/a "Les" were together in the premises of Apartment 5-F, 749 East 231st Street, Bronx, New York.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

From on or about January 1, 1976, and substantially continuously thereafter, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo", NORMAN WERTHEIMER a/k/a "Normie", SAM LEVENTHAL a/k/a "Sam the Cop", HARRY FINEROW, LEWIS A. FRIELICH a/k/a "Larry", LAWRENCE PUTZER a/k/a "Larry", MORRIS MELAVSKY a/k/a "Moe", MAC FENSTER, RAY ADAMIAK, WILLIAM DE MASE a/k/a "Bill", and LESTER FINE

a/k/a "Les", the defendants, did unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports and race horse wagering business (a) which was in violation of the laws of the State of New York, Penal Law Sections 225.05 and 225.10, and (b) which involved five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) which was and remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of two thousand dollars (\$2,000) in any single day.

(Title 18, United States Code, Sections 1955 and 2)

COUNT THREE

The Grand Jury further charges:

On or about the 27th day of January 1977, in the Southern District of New York, HARRY FINEROW, the defendant, while being engaged in the business of betting and wagering unlawfully, knowingly and wilfully did use a wire communication facility, to wit a telephone, for the transmission in interstate commerce of bets and wagers and information assisting in the placing of bets and wagers on a sporting event and contest, and for the transmission of a wire communication which entitled the recipient to receive money and credit as a result of bets and wagers and for information assisting in the placing of bets and wagers.

(Title 18, United States Code, Section 1084)

COUNT FOUR

The Grand Jury further charges:

On or about the 14th day of January 1977, in the Southern District of New York, LEWIS A. FRIELICH a/k/a "Larry",

the defendant, while being engaged in the business of betting and wagering, unlawfully, knowingly and wilfully did use a wire communication facility, to wit a telephone, for the transmission in interstate commerce of bets and wagers and information assisting in the placing of bets and wagers on a sporting event and contest, and for the transmission of a wire communication which entitled the recipient to receive money and credit as a result of bets and wagers and for information assisting in the placing of bets and wagers.

(Title 18, United States Code, Section 1084)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

GR:gdd
12-651

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER : AFFIDAVIT
AUTHORIZING THE INTERCEPTION OF : M19-97()
WIRE COMMUNICATIONS. :

-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

CARL W. AMADITZ, Special Agent, Federal Bureau of
Investigation, New York, being duly sworn, states:

1. I am an "investigative or law enforcement
officer . . ." of the United States within the meaning of
Section 2510(7) of Title 18, United States Code, that is,
an officer of the United States who is empowered by law to
conduct investigations of and to make arrests for offenses
enumerated in Section 2516 of Title 18, United States Code.

2. I make this affidavit in support of an appli-
cation which seeks authorization to intercept wire communi-
cations concerning offenses involving violations of Section
1955 of Title 18, United States Code, and a conspiracy to
violate the said statute in violation of Section 371 of Title
18, United States Code, which have been and are being commit-
ted by ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABBA,
SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a
"LARRY" FRIELICH, and other persons associated with them
whose identities are as yet unknown.

//

12-651

3. I have supervised the conduct of the investigation of these offenses for approximately seven months, and as a result of my personal participation in that investigation and of reports made to me by Special Agents of the Federal Bureau of Investigation under my direction, I am familiar with all the circumstances of the offenses. I have discussed this matter with attorneys in the United States Attorney's Office for the Southern District of New York, and in particular with Assistant United States Attorney T. Gorman Reilly. On the basis of that familiarity, I allege the facts contained in the numbered paragraphs below to show that:

a) There is probable cause for the belief that ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABBA, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FYNROW, LEWIS a/k/a "LARRY" FRIELICH, and others whose identities are as yet unknown, have committed and conspired to commit, are committing and conspiring to commit, and will commit and conspire to commit offenses involving the conducting, financing, managing, supervising, directing, or owning of all or part of an illegal gambling business in which five or more persons are participating and which has a gross revenue of \$2,000 or more in any single day or has been in substantially continuous operation for over thirty (30) days, thereby being in violation of Article 225, Sections 225.0 through 225.4 of the New York State Revised Penal Law, and also in violation of Sections 1955 and 371 of Title 18, United States Code.

b) There is probable cause to believe that particular wire communications of ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABBA, SAM LEVENTHAL, LEWIS a/k/a

12-651

"LARRY" FRIELICH, HARRY FINEROW, and others whose identities are as yet unknown, concerning these offenses, will be obtained through the interception of these wire communications, authorization for which is herein applied for. In particular, these wire communications will reveal the identities, roles of all participants in the illegal gambling business, the locations at which the principal participants operate from, the amounts of monies owed to or by bettors and other participants in the illegal gambling business, the distribution of contraband monies and records obtained by and used in the illegal gambling business, the methods of record-keeping and the meaning thereof, the methods of operation used by participants in the gambling enterprise and the full nature and scope of the conspiracy involved therein. In addition, the communications are expected to constitute admissible evidence of the offenses.

c) There is probable cause to believe that particular communications concerning these offenses will be obtained through the interception of wire communications to and from telephone number 914-794-0960, listed to Arthur Cohen, Bungalow #6, Nob Hill Colony, Kiamesha Lake, New York.

d) There is probable cause to believe that the telephone line for number 914-794-0960 has been used, is being used and will be used by ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABEA, SAM LEVENTHAL, LEWIS a/k/a "LARRY" FRIELICH, HARRY FINEROW and others whose identities are as yet unknown, in connection with the commission of the above-described offenses.

e) Normal investigative procedures have been tried and failed and reasonably appear unlikely to succeed if tried further.

f) No previous applications are known to have been made to any judge for authorization to intercept or for approval of interception of wire or oral communications involving any of the persons, facilities, or places specified herein except as enumerated below:

(1) County Judge William Deckelman, Sullivan County, New York, authorized the interception of wire communications of ROBERT LOEWINGER and others not involved herein over telephone number 914-794-4491, listed to Wilson Walker, 338 Broadway, Monticello, New York, from August 18, 1969, through September 17, 1969.

(2) County Judge William Deckelman, Sullivan County, New York, authorized the interception of wire communications of ROBERT LOEWINGER and others not involved herein over telephone numbers 914-794-6143 and 914-794-5012, listed to William Logan, Town and Country Cottages, Route 42, Monticello, New York, from August 18, 1969, through September 17, 1969.

(3) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of NORMAN WERTHEIMER, ROBERT LOEWINGER, and others not involved herein over telephone number 914-434-8159, listed to Norman Wertheimer, Thompsonville Road, Fallsburgh, New York, from July 27, 1970 through September 26, 1970.

GTR:bmj
12-651

- (4) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of SAM LEVENTHAL, NORMAN WERTHEIMER, and others not involved herein over telephone number 914-794-2258, listed to Harry Green, Town and Country Bungalows, Monticello, New York, from September 21, 1973 through October 20, 1973.
- (5) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of SAM LEVENTHAL, NORMAN WERTHEIMER and others not involved herein over telephone number 914-794-9703, listed to County Seat Social Club, 46 Jefferson Street, Monticello, New York, from September 6, 1974, through October 5, 1974.
- (6) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of NORMAN WERTHEIMER, ROBERT LOEWINGER, and others not involved herein over telephone number 914-794-8358, listed to Arlene Glatzer, 14 Burton Avenue, Monticello, New York, from September 6, 1974 through October 5, 1974.
- (7) Acting County Judge Louis B. Scheinman, Sullivan County, New York, authorized the interception of wire communications of NORMAN WERTHEIMER and others not involved herein, over telephone number 914-794-9188, listed to the Omega Social Club, 90-17 Monticello, New York, from August 5, 1976 to September 3, 1976.

(8) On December 30, 1976, the Honorable Thomas P. Griesa, United States District Judge for the Southern District of New York, signed an order authorizing the interception of wire communications of the following persons over the following telephone lines:

- (i) 914-794-3244 located at 123 Terry Lane, apartment 123, Monticello, New York, subscribed to by Debra Scialabba, and used by ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244 and others as yet unknown;
- (ii) 914-794-8026 located at 74 Florida Building, The Delano Hotel, Old Liberty Road, Monticello, New York, subscribed to by Gil Hellinger, and used by SAM LEVENTHAL and others as yet unknown;
- (iii) and (iv) 914-647-3442 and 914-647-3412, located at Apartment 29B, Nevele Road, Ellenville, New York, subscribed to by Lewis Frielich, and used by LEWIS a/k/a "LARRY" FRIELICH and others as yet unknown;
- (v) and (vi) 914-647-6691 and 914-647-6358, located at 16 Sandra Street, Ellenville, New York, subscribed to by Morris Melavsky, and used by MORRIS MELAVSKY, and others as yet unknown.

PROBABLE CAUSE

4. On December 30, 1976 I submitted an affidavit in support of the Government's application for an order authorizing the interception of wire communications as set forth in paragraph 3(f)(8). All of the facts alleged in my affidavit of December 30, 1976 are incorporated herein by reference. A copy of said affidavit is annexed hereto as Exhibit "A."

5. During the period December 30, 1976 through January 18, 1977 I acted as the Supervising Agent of the electronic surveillance authorized by the order of the Honorable Thomas P. Griesa, United States District Judge, dated December 30, 1976. I have reviewed all of the logs maintained by the Special Agents of the Federal Bureau of Investigation who monitored the wire communications under my supervision. In addition I have reviewed transcripts and have listened to the tape recordings of numerous conversations overheard pursuant to the December 30, 1976 order of Judge Griesa.

6. On December 30, 1976 Judge Griesa authorized the installation and use of pen registers or other similar devices with respect to the six telephone lines specified in paragraph 3(f)(8) supra during the twenty day period of Court authorized electronic surveillance.

7. a. During the period of the Court authorized electronic surveillance, monitoring of wire communications established that none of the known subjects of this investigation made outgoing telephone calls directly to either ROBERT LOEWINGER or NORMAN WERTHEIMER. Instead, LOEWINGER and WERTHEIMER made only outgoing calls to the other subjects. Many of these contacts were arranged through an

intermediary, DEBRA SCIALABBA,* whose calls were intercepted on telephone number 914-794-3244. SCIALABBA operated an answering or "call-back" service for LOEWINGER and WERTHEIMER. Callers would leave a name or number with SCIALABBA, who in turn would relay these messages to either LOEWINGER or WERTHEIMER during their periodic calls to the answering service. The following example of an incoming call to 914-794-3244 on January 9, 1977 at 12:24 p.m. illustrates how the call-back service operated:**

DEBRA SCIALABBA: Hello.
RONNIE: Hi, is Normie there?
SCIALABBA: Uh, leave your number; he'll get back to you.
RONNIE: O.K. It's 634-
SCIALABBA: 634-
RONNIE: 13 -
SCIALABBA: Yeah.
RONNIE: 81.
SCIALABBA: 1381. O.K. Thank you.
RONNIE: O.K. Ronnie.
SCIALABBA: Ronnie?
RONNIE: Yeah.

* The "UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244" referred to in the order of December 30, 1976 identified herself on 1/12/77 at 1:49 p.m. as "Debbie Scialabba, Sleepy Hollow, 123 Terry Lane."

** The transcripts of overheard telephone conversations set forth in this affidavit are substantially verbatim but do not purport to be exact.

b. Other known subjects in this investigation contacted LOEWINGER or WERTHEIMER in the same manner. For example, at 12:52 p.m. on January 15, 1977, an outgoing call from 914-794-8026 to 914-794-3244, and an incoming call on 914-794-3244, were intercepted simultaneously. The conversation was as follows:

DEBRA SCIALABBA: Hello.

*SAM LEVENTHAL: Would you have him call his cousin right away, please?

SCIALABBA: Thank you.

At 12:54 p.m. on the same date, the following incoming call was intercepted on 914-794-3244:

DEBRA SCIALABBA: Hello.

**ROBERT LOEWINGER: Any calls?

SCIALABBA: Cousin, right away.

LOEWINGER: Yeah.

SCIALABBA: That's it.

The next incoming call on 914-794-8026 on the same date was intercepted and the following conversation ensued:

SAM LEVENTHAL: Hello.

ROBERT LOEWINGER: Yeah.

LEVENTHAL: Listen, uh, you got a number on the Clemson game and the, uh, North Carolina game?

LOEWINGER: No. Why?

* SAM LEVENTHAL's voice was identified by Joseph Tripodo, Senior Investigator, New York State Police, and by the affiant. During the past five years Senior Investigator Tripodo has had several conversations with LEVENTHAL in person and has overheard LEVENTHAL's voice during the course of numerous State court approved electronic surveillances.

** ROBERT LOEWINGER's voice was identified by Special Agent Leland F. Lowery, Federal Bureau of Investigation. Special Agent Lowery has had numerous conversations with LOEWINGER over the past ten years, both in person and over the telephone.

TGR:bmj
12-651

A 21

LEVENTHAL: Some guy called me, he's uh - customer, he bets during the summer, ya know -

LOEWINGER: You must be kidding!

LEVENTHAL: There's no numbers on those games?

LOEWINGER: What do ya even talk to the guy (inaud)?

LEVENTHAL: He b - He's a dollar better.

LOEWINGER: I don't have no games - cause they ain't even dealing on Saturday afternoons -

LEVENTHAL: Oh, yeah?

LOEWINGER: You don't know what's going on. You know all the customers we chased?

LEVENTHAL: Yeah

LOEWINGER: Know where they are?

LEVENTHAL: New York.

LOEWINGER: No, they're in Ellenville (laughs)

LEVENTHAL: They're in Ellenville?

LOEWINGER: Yeah, I just got off the phone with the kid.

LEVENTHAL: Yeah

LOEWINGER: I said, "You do what you want," I says, uh -

LEVENTHAL: What, you gave up the collage?

LOEWINGER: Sure, I give up the college

LEVENTHAL: When?

LOEWINGER: Tuesday

LEVENTHAL: We're not - w -

LOEWINGER: After I got killed Monday, I gave it up (laughs)

LEVENTHAL: (Laughs)

LOEWINGER: So I says, "How you doing this week?" He says "Holding our own," I says "You sure?"

-10-

20

TGR:1nd
12-651

LEVENTHAL: Yeah.

LEWINGER: He went back over his sheet for the week -

LEVENTHAL: Yeah.

LOEWINGER: He wins in the pros and he lose in the college (laughs)

LEVENTHAL: (Grunts)

LOEWINGER: Yeah, well we win in the pros this week, too, but what do I need - uh - Monday night, I lose about 3000, what do I need that for?

LEVENTHAL: I told ya, I told ya at the beginning of the season -

LOEWINGER: That's dealing small!

LEVENTHAL: Yeah.

LOEWINGER: Fuck'em in their asses - ya got anthing?

LEVENTHAL: It's no good. Ya gotta - yeah, give me, uh, Penn minus 11 for a dollar.

LOEWINGER: Yeah. Alright, use the game now at ten.

LEVENTHAL: O.K.

LOEWINGER: Penn minus 11 for a dollar (unintelligible)

LEVENTHAL: Yeah, call - call me at 1:00 sharp.

LOEWINGER: And where's Ray?

LEVENTHAL: Ray will come in soon, I guess.

LOEWINGER: Yeah, I suppose so.

LEVENTHAL: Alright.

LOEWINGER: Alright.

Based on my experience and training and that of other Special Agents of the Federal Bureau of Investigation in the conduct of gambling investigations I understand the reference by LEVENTHAL to "a number" on the Clemson game to be to the line or point spread for that game; the reference by LEVENTHAL to "a dollar better" to be to a customer who

TGR:lnd
12-651

deals in bets of 100 dollars; in reference by LEVENTHAL to "Penn minus 11 for a dollar" to be laying off of a 100 dollar bet on Penn with Penn being favored to win by 11 points; and the reference by LOEWINGER to using the game now "at ten" to be a direction to change the point spread from 11 to 10 in Penn's favor.

c. HARRY FINEROW, and LEWIS a/k/a "LARRY" FRIELICH operating from their bookmaking location in Ellenville, New York, also contacted LOEWINGER and WERTHEIMER in the same manner through the use of the answering service.

d. An individual who identified himself only as "Mr. Star" called SCIALABBA at 914-794-3244 at least once and usually two or more times each day during the period of the wire interceptions. This individual provided information concerning line changes which in turn were relayed by SCIALABBA to either LOEWINGER or WERTHEIMER the next time he was called.

e. As a result of the above described method of operation I was unable to determine the identity of the telephone being used by LOEWINGER and WERTHEIMER by use of pen registers.

8.a. In addition to the surveillance of ROBERT LOEWINGER and NORMAN WERTHEIMER coming to and from the Nob Hill Bungalow Colony, Kiamesha Lake, New York, described in paragraph 18.c), d) and e) of my December 30, 1976 affidavit, either I or a Special Agent of the Federal Bureau of Investigation working under my supervision made the following observations of LOEWINGER and/or WERTHEIMER, either entering or leaving the premises of the Nob Hill Bungalow Colony, located two miles north of Monticello, New York on Route 42, at Kiamesha Lake, New York:

TGR:Ind
12-651

DATE	SUBJECT	ARRIVAL	DEPARTURE
January 6, 1977	LOEWINGER WERTHEIMER	5:55 P.M. *	7:35 P.M. 7:35 P.M.
January 7, 1977	LOEWINGER	5:55 P.M.	*
January 8, 1977	LOEWINGER WERTHEIMER	11:59 A.M. 12:55 P.M.	2:05 P.M. 2:05 P.M.
January 8, 1977	LOEWINGER WERTHEIMER	6:02 P.M. 5:52 P.M.	* *
January 10, 1977	LOEWINGER WERTHEIMER	* *	7:42 P.M. 7:42 P.M.
January 12, 1977	LOEWINGER WERTHEIMER	* 6:40 P.M.	7:40 P.M. 7:40 P.M.
January 15, 1977	LOEWINGER WERTHEIMER	* 5:47 P.M.	7:36 P.M. 7:36 P.M.
January 17, 1977	LOEWINGER WERTHEIMER	6:14 P.M. 5:40 P.M.	7:37 P.M. 7:37 P.M.
January 18, 1977	LOEWINGER WERTHEIMER	6:14 P.M. 5:47 P.M.	7:43 P.M. 7:44 P.M.
January 22, 1977	LOEWINGER	12:00 Noon	*
January 23, 1977	LOEWINGER WERTHEIMER	* *	2:02 P.M. 2:02 P.M.
January 30, 1977	LOEWINGER WERTHEIMER	11:55 A.M. *	2:03 P.M. 2:03 P.M.
January 31, 1977	LOEWINGER WERTHEIMER	* 5:42 P.M.	7:37 P.M. 7:37 P.M.
February 2, 1977	LOEWINGER WERTHEIMER	5:53 P.M. 6:01 P.M.	7:32 P.M. 7:32 P.M.
February 7, 1977	LOEWINGER WERTHEIMER	5:56 P.M. 5:53 P.M.	* *
February 10, 1977	LOEWINGER WERTHEIMER	* *	7:42 P.M. 7:43 P.M.
February 12, 1977	LOEWINGER WERTHEIMER	12:00 Noon 11:58 A.M.	* *
February 13, 1977	LOEWINGER WERTHEIMER	* *	1:58 P.M. 1:59 P.M.

b. On January 7, 1977, at 6:17 P.M., a Special Agent of the Federal Bureau of Investigation acting under my direction observed the vehicle driven by WERTHEIMER, a

* Asterisk indicates that no surveillance of that subject was conducted during the applicable time period.

TGR:ld
1-651

Chevrolet bearing New York license 537-MTC, and the vehicle driven by LOEWINGER, a Cadillac bearing New York license 9D-102, parked in a snow field in the vicinity of Bungalow #6, Nob Hill Colony, Route 42, Kiamesha Lake, New York. Bungalow #6 is the third bungalow behind the main building at the bungalow colony.

c. On January 8, 1977, a Special Agent of the Federal Bureau of Investigation acting under my direction observed WERTHEIMER enter Bungalow #6, Nob Hill Colony, at 5:52 P.M. The building was completely dark prior to WERTHEIMER's entrance, and shortly after he entered a light appeared in the window in one corner of the building. The same Special Agent observed LOEWINGER enter Bungalow #6 at 6:02 P.M.

9.a. On January 14, 1977, Postal Inspector Jerry Sandhagen, United States Postal Service, Poughkeepsie, New York, advised Special Agent Leland F. Lowery, who in turn advised me, that the following individuals received mail at the Nob Hill Colony, Kiamesha Lake, New York: Nancy Lyttle, Shelly Birnbaum, Arthur Cohen, Louis Tieger, and Erneski Salls.

b. On January 17, 1977 The Directory Information service of the New York Telephone Company advised Linda Zuppi, clerk, Federal Bureau of Investigation, who in turn advised me, that Arthur Cohen, Bungalow #6, Nob Hill Bungalow Colony, Kiamesha Lake, New York, had telephone number 914-794-0960.

10.a. On January 17, 1977, I dialed telephone number 914-794-0960 at 5:35 P.M. The phone rang 15 times and no one answered. As noted above in paragraph 8.a., WERTHEIMER was observed entering the Nob Hill Colony premises at 5:40 P.M. At 6:18 P.M., 6:46 P.M., 7:00 P.M. and 7:25 P.M., I dialed 914-794-0960 at the same time an incoming call was being placed by WERTHEIMER to SCIALABPA over the

TGR:lnd
12-651

answering service. On each of the four instances, I received a busy signal. At 7:37 P.M., LOEWINGER and WERTHEIMER exited the Nob Hill Colony. At 7:38 P.M. I dialed 914-794-0960 once again; the phone rang 15 times and no one answered.

b. On January 18, 1977, a Special Agent of the Federal Bureau of Investigation, acting under my direction, placed a call to 914-794-0960 at 5:45 P.M., and no one answered. WERTHEIMER entered the Nob Hill Colony premises at 5:47 P.M. At 6:20 P.M., 6:40 P.M., 6:45 P.M., 7:07 P.M., 7:27 P.M., 7:34 P.M., and 7:38 P.M., I dialed 914-794-0960 at the same time that WERTHEIMER was calling SCIALABBA at the answering service, and each time the line was busy. At 7:44 P.M. WERTHEIMER departed the bungalow colony. At 7:45 P.M., I again dialed 914-794-0960, and no one answered.

11.a. On January 26, 1977, the Security Officer of the New York Telephone Company provided Special Agent Frank J. Meyers with the Service Record Card for telephone number 914-794-0960, Arthur Cohen, Bungalow #6, Kiamesha Lake, and Special Agent Meyers turned the Service Record Card over to me. This card contained a reference telephone number of 794-4740, and also listed a billing address care of Nob Hill, Bungalow #6, Kiamesha Lake, 12751.

b. On January 28, 1977, James Stafford, Security Office, New York Telephone Company, advised me that the reference telephone number indicated where the subscriber could be contacted if there were problems of any kind prior to the installation of a new telephone.

c. On September 17, 1976, Special Agent Frank J. Meyers was advised by the Security Officer of the New York Telephone Company and Special Agent Meyers in turn advised me that its records show that telephone number 914-794-4740 is listed to Men's World/Boy's Town Clothing, Inc., 221 Broadway, Monticello, that the billing name is ROBERT

TGR:ld
12-651

A- 27

LOEWINGER at the same address and that one employer/officer in the business is ROBERT LOEWINGER, 15 Hammond Street, Monticello, New York.

d. On January 26, 1977, the Security Officer of the New York Telephone Company also provided Special Agent Meyers with a credit information card pertaining to Arthur Cohen, the subscriber to telephone number 914-794-0960, and Special Agent Meyers turned this record over to me. Under the caption of "credit references", the card lists "unemployment insurance".

e. On January 28, 1977, William Bartol, New York State Division of Employment, Monticello, New York, advised Special Agent Leland F. Lowery who in turn advised me, that his files show no record of one Arthur Cohen as being a recipient of New York State Unemployment Insurance.

f. On January 28, 1977, a check of the records of the New York State Department of Motor Vehicles conducted via computer terminal at the Federal Bureau of Investigation's New York Office, revealed that there was no one named Arthur Cohen holding a current New York State driver's license or registration and residing in Sullivan County, New York.

12.a. On January 26, 1977, the Security Officer of the New York Telephone Company provided Special Agent Frank J. Meyers with the long distance toll records for telephone number 914-794-0960, and Special Agent Meyers turned these records over to me. As of January 26, 1977 the most recent toll records available were through January 3, 1977, two days prior to the commencement of wire interceptions over the six telephones listed in the attached affidavit. My analysis of the toll records from December 4, 1976 through January 3, 1977, shows the following:

- (1) During the 30-day period analyzed
442 long-distance telephone calls
were made from this telephone.

TGR:ldn
12-651

(2) 434 of these calls were made during the standard bookmaking hours of 11:30 A.M. through 2:00 P.M., and 5:30 P.M. through 8:00 P.M.

(3) The remaining eight calls were made between 3:49 P.M. and 3:59 P.M. on the last two Sundays of the regular professional football season (December 5 and 12, 1976), when most West-coast games would start at 4:00 P.M.

(4) Of the 442 calls, 411 took three minutes or less to complete, and only two were longer than six minutes.

b. The above facts are indicative of a high-volume bookmaking operation where numerous calls must be made for line information, lay-offs, and to reach customers. The short duration of the vast majority of calls is common in large-scale sports bookmaking operations since it is imperative that the telephone not be tied up on any one call for a lengthy period of time.

13.a. On certain calls intercepted over telephone number 914-794-3244 (the answering service) between January 5, 1977 and January 18, 1977, the caller left a telephone number where he could be reached. In every instance, this information was relayed by DEBRA SCIALABBA to either LOEWINGER or WERTHEIMER. Several of the long-distance telephone numbers left with the answering service during this time period correspond with telephone numbers called between December 4, 1976 and January 3, 1977, which appear on the toll records referred to in paragraph 6 above:

TGR:ow
12-651

<u>TELEPHONE NUMBER LEFT WITH ANSWERING SERVICE</u>	<u>DATE LEFT</u>	<u>TELEPHONE NUMBER APPEARING ON TOLL RECORDS</u>	<u>DATE NUMBER APPEARS ON TOLL RECORDS</u>
212-758-1161	Jan. 7, 1977	212-758-1161	December 6, 12, 18, 19, 23, January 3, 1977
212-838-3398	Jan. 5, 6, 1977	212-838-3398	December 5, 6, 12, 20, 22, Jan. 3, 1977
J-592-0014	Jan. 10, 1977	201-592-0014	December 4, 5, 11, 19, 20 & 22
672-9236	Jan. 8, 1977	305-672-9236	December 4, 5, 6, 11, 18, 20, 25, 27, 31
561-9749	Jan. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 1977	561-9749	January 2, 1977

b. On February 18, 1977, the Security Office of the New York Telephone Company provided Special Agent Frank J. Meyers with the long distance toll records for telephone number 914-794-0960 for the period January 4, 1977 through February 3, 1977, and Special Agent Meyers turned these records over to Special Agent Leland F. Lowery, who then turned them over to me. A comparison of these tolls records with the daily logs and the tape recordings of telephone calls made to the answering service shows a correlation between the date and times when call-back numbers were left with the answering service and the dates and times when calls were made to the call-back numbers from 914-794-0960:

<u>NUMBER LEFT WITH ANSWER- ING SERVICE</u>	<u>DATE AND TIME WHEN NUMBER LEFT</u>	<u>NUMBER APPEARING ON TOLL RECORDS FOR 914-794-0960</u>	<u>DATE AND TIME NUMBER APPEARS ON TOLL RECORDS</u>
212-838-3398	1/5/77 6:15 P.M.	212-838-3398	1/5/77 6:52 P.M.
212-838-3398	1/6/77 6:46 P.M.	212-838-3398	1/6/77 6:49 P.M.

TGR:ow
12-651

<u>NUMBER LEFT WITH ANSWER- ING SERVICE</u>	<u>DATE AND TIME WHEN NUMBER LEFT</u>	<u>NUMBER APPEARING ON TOLL RECORDS FOR 914-794-0960</u>	<u>DATE AND TIME NUMBER APPEARS ON TOLL RECORDS</u>
212-758-1161	1/7/77 7:21 P.M.	212-758-1161	1/7/77 7:21 P.M.
J-592-0014	1/10/77 6:16 P.M.	201-592-0014	1/10/77 6:18 P.M.
672-9236	1/8/77 11:54 A.M.	305-672-9236	1/8/77 12:05 P.M.
561-9763	1/8/77 7:29 P.M.	914-561-9763	1/8/77 7:32 P.M.
561-9763	1/16/77 12:08 P.M.	914-561-9763	1/16/77 12:13 P.M.
561-9763	1/18/77 6:13 P.M.	914-561-9763	1/18/77 6:20 P.M.
634-1381	1/9/77 12:24 P.M.	914-634-1381	1/9/77 12:28 P.M.
564-9856	1/11/77 7:23 P.M.	914-564-9856	1/11/77 7:31 P.M.
564-9856	1/12/77 7:12 P.M.	914-564-9856	1/12/77 7:15 P.M.
564-9856	1/13/77 7:24 P.M.		
561-9524	1/14/77 7:32 P.M.	914-561-9524	1/14/77 7:33 P.M.
753-8646	1/17/77 6:56 P.M.	914-753-8646	1/17/77 7:03 P.M.
561-9749	1/6/77 6:27 P.M.	914-561-9749	1/6/77 6:27 P.M.
561-9749	1/7/77 6:16 P.M.	914-561-9749	1/7/77 6:18 P.M.
561-9749	1/7/77 6:56 P.M.	914-561-9749	1/7/77 7:03 P.M.
561-9749	1/8/77 1:12 P.M.	914-561-9749	1/8/77 1:14 P.M.
561-9749	1/8/77 6:24 P.M.	914-561-9749	1/8/77 6:28 P.M.
561-9749	1/9/77 1:30 P.M.		
561-9749	1/10/77 6:14 P.M.	914-561-9749	1/10/77 6:17 P.M.
561-9749	1/11/77 6:05 P.M.	914-561-9749	1/11/77 6:17 P.M.
561-9749	1/12/77 6:22 P.M.	914-561-9749	1/12/77 6:27 P.M.
561-9749	1/13/77 6:31 P.M.		
561-9749	1/14/77 6:14 P.M.	914-561-9749	1/14/77 6:17 P.M.
561-9749	1/15/77 11:38 A.M.	914-561-9749	1/15/77 12:07 P.M.
561-9749	1/15/77 6:17 P.M.	914-561-9749	1/15/77 6:20 P.M.
561-9749	1/15/77 7:11 P.M.	914-561-9749	1/15/77 7:14 P.M.
561-9749	1/16/77 1:21 P.M.	914-561-9749	1/16/77 1:24 P.M.

c. On February 24, 1977 the Security Supervisor of the New York Telephone Company advised Special Agent John

TGR:ow
12-651

Kravec who in turn advised me that their records show that there is only one telephone located in Bungalow number 6, Nob Hill Colony, Kiamesha Lake, New York. That telephone is listed to Arthur Cohen and the number is 914-794-0960.

d. On February 24, 1977 the Security Supervisor of the New York Telephone Company advised Special Agent Frank J. Meyers who in turn advised me that telephone number 914-794-0960 was a current and active number as of that date and is listed to Arthur Cohen, Bungalow 6, c/o Nob Hill Bungalow Colony, Kiamesha Lake, New York.

14. a. The following excerpts of recently intercepted conversations illustrate how line changes are received by DEBRA SCIALABBA from "Mr. Star", are relayed to LOEWINGER or WERTHEIMER and then are passed on to SAM LEVENTHAL:

On January 15, 1977, at 7:09 P.M., the following incoming call was intercepted over 914-794-3244 (the Answering Service):

*	*	*
MR. STAR:		Hello
DEBRA SCIALABBA:		Yeah
STAR:		Mr. Star

TGR:slc
12-651

SCIALABBA: Right, what?
* * *
STAR: Leaving for St. Johns,
leaving for St. John's at
10:00*
SCIALABBA: Yeah
STAR: Leaving for St. Johns at
10:00
SCIALABBA: Um-hum, um-hum
* * *

At 7:12 P.M. on the same date, the following
incoming call was intercepted over the same telephone
number:

DEBRA SCIALABBA: Hello
**NORMAN WERTHEIMER: Yeah, honey
* * *
SCIALABBA: St. Johns, 10:00. St. Johns,
10:00
WERTHEIMER: St. Johns, 10
SCIALABBA: Yeah, 10:00
WERTHEIMER: Right
* * *

At 7:21 P.M. on the same date, the following
incoming call was intercepted over telephone number
914-794-8026:

SAM LEVENTHAL: Hello
NORMAN WERTHEIMER: Yeah doc
* * *

* Based upon my experience and training in the conduct of
gambling investigations and that of other Special Agents of
the Federal Bureau of Investigation I understand "10:00" or
"Ten o'clock" to be the code word used by Mr. Star to in-
dicate a point spread of 10 points.

** NORMAN WERTHEIMER's voice was identified by Senior
Investigator Joseph Tripodo, New York State Police, on the
basis of several conversations with WERTHEIMER in person
during the past five years as well as numerous telephone
conversations overheard during the course of State Court
approved electronic surveillances.

TGR:ld
12-651

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LEVENTHAL: You wanna change anything?
WERTHEIMER: Yeah, hold on (unintelligible).
Make the St. John's game ten -
LEVENTHAL: Ten
WERTHEIMER: Yeah

* * *

b. In addition to the surveillances of SAM LEVENTHAL coming to and from the Delano Hotel on Old Liberty Road, Monticello, New York described in paragraph 30 of my December 30, 1976 affidavit either I or a Special Agent of the Federal Bureau of Investigation acting under my supervision observed LEVENTHAL either entering or leaving the premises of the said Delano Hotel on the following dates and at the following times:

<u>DATE</u>	<u>ARRIVAL</u>	<u>DEPARTURE</u>
February 9, 1977	5:58 P.M.	7:35 P.M.
February 12, 1977	11:52	*
February 17, 1977	5:46 P.M.	7:35 P.M.

15. The following series of conversations on January 8 and 9, 1977, demonstrate the operation of the answering service and show the connection between ROBERT LOEWINGER - NORMAN WERTHEIMER in Monticello and HARRY FINEROW - LARRY FRIELICH in Ellenville:

On January 8, 1977 at 1:31 P.M., the following outgoing call from 914-647-3412 and incoming call to 914-794-3244 was simultaneously intercepted:

DEBRA SCIALABBA: Hello
LEWIS a/k/a
"Larry" FRIELICH: Larry in Ellenville*
SCIALABBA: Thank you

On the same date at 1:39 P.M. the following incoming call was intercepted over 914-794-3244:

* During the course of numerous monitored conversations over telephone numbers 914-647-3412 and 914-647-3442, an individual constantly referred to himself as "Larry" or "Larry F.". During the course of an incoming call to 914-647-3442 on January 16, 1977 at about 1:30 P.M. HARRY FINEROW turned the phone over to this individual when the caller asked to speak with "Frielich".

TGR:bg
12-651

LARRY FRIELICH: Hello

ROBERT LOEWINGER: Yeah - Yeah - Here's what I'm using. You with me?

FRIELICH: Yeah

LOEWINGER: Two and a half

FRIELICH: What two and a half?

LOEWINGER: Rutgers

FRIELICH: Yeah

LOEWINGER: Seven - Indiana

FRIELICH: No, I just want the- uh - East/ West

LOEWINGER: The East and West? I still got it.

FRIELICH: Alright, gimme this - gimme the West

LOEWINGER: Yeah

FRIELICH: Minus the 3 1/2 for four dollars**

LOEWINGER: Yeah

FRIELICH: Could you possibly call me at 4 o'clock? Before the other game goes off?

LOEWINGER: That's up to Normie (inaud) hold on, I'll ask him. (Inaud) four.

FRIELICH: Yeah

LOEWINGER: (Inaud) back at four o'clock? Yeah he'll call you

FRIELICH: Uh, o.k.

LOEWINGER: (Inaud) . . . later than four

FRIELICH: Thank you

On the next day, January 9, 1977, an incoming call to 914-794-3244 was intercepted at 1:55 P.M.:

DEBRA SCIALABBA: Hello.

* Based upon my experience and training in the conduct of gambling investigations and that of other special agents of the Federal Bureau of Investigation I understand this statement to be a lay off by FRIELICH of a 400 dollar bet with LOEWINGER where the West is favored by a 3 1/2 point spread.

*HARRY FINEROW: Tell him to call Ellenville
SCIALABBA: Call Ellenville?
FINEROW: Yeah
SCIALABBA: Just that?
FINEROW: Larry or Harry - he knows it
SCIALABBA: Oh, o.k.
FINEROW: Right

At 2:01 P.M. on the same date, another incoming call to the answering service was intercepted:

DEBRA SCIALABBA: Hello
NORMAN WERTHEIMER: Yeah. Any calls?
SCIALABBA: Call Ellenville
WERTHEIMER: Ellenville?
SCIALABBA: Yeah - Larry, I guess it is
WERTHEIMER: Yeah
SCIALABBA: He just said Ellenville
WERTHEIMER: Yeah
SCIALABBA: That's it.

At 2:06 P.M. on the same date, the following incoming call was intercepted over telephone number 914-647-3442:

LARRY FRIELICH: Hello
NORMAN WERTHEIMER: Yeah, kid
FRIELICH: What's doing? - I'm waiting for your call from yesterday.
WERTHEIMER: Whad'ya mean - from yesterday?
FRIELICH: Ya said ya were gonna call me at 4 o'clock - you forgot
WERTHEIMER: Me? (unintelligible)
FRIELICH: Bobby - Bobby said - he asked you remember?

* Harry Finerow identified himself during a monitored conversation on January 7, 1977 at 7:10 P.M.

WERTHEIMER: Who the fuck knows - uh - I thought - uh - I called -

FRIELICH: Ah, its no big -

WERTHEIMER: Somebody else at 4 o'clock.

FRIELICH: Whatever

WERTHEIMER: Yeah

FRIELICH: Whad'ya got in the game today?

WERTHEIMER: Uh - four

FRIELICH: Four? Yeah, that's what we got it. Alright, I just wanted to know the number.

WERTHEIMER: Yeah

FRIELICH: We - we, uh - 770 tab what we got here.

WERTHEIMER: 770? 770 is right on the button.*

FRIELICH: Want to talk to Harry?

WERTHEIMER: Uh, yeah - what's doing over there?

* * *

HARRY FINEROW: Yeah?

WERTHEIMER: Hello, comish (phonetic)

FINEROW: How ya feeling, doctor?

* * *

WERTHEIMER: Meantime, Oakland better win today.

FINEROW: Yeah

WERTHEIMER: That's all I can say.

FINEROW: That's all everybody can say.

WERTHEIMER: Alright, kid.

FINEROW: Everybody "schmeits" (phonetic) with them. What I want - there's something I wanna ask ya - uh - Oh, how was yesterday? Chop?

* On the basis of my experience and training in the conduct of gambling investigations and that of other Special Agents of the Federal Bureau of Investigation I understand the "77 tab" to refer to the amount of money - \$770 - owing between LOEWINGER and FRIELICH as a result of lay off bets.

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WERTHEIMER: Yesterday, uh - the afternoon was a chop, at night we lose - we lose.

FINEROW: You lose the game at 3 1/2? What night? Oh, you talking the baskets and -

WERTHEIMER: The whole fucking - the afternoon was a bowl of borscht, and at night we got destroyed with baskets -

FINEROW: Oh, we didn't do too much with baskets last night, so I won't -

* * *

16. a. On January 8, 1977 an incoming call to 914-794-3244 was intercepted at 7:32 P.M.:

DEBRA SCIALABBA: Hello.

ROBERT LOEWINGER: Any calls?

SCIALABBA: Yeah, Mr. Newburg 561-9763.

LOEWINGER: Yeah

SCIALABBA: That's it.

LOEWINGER: That's all for the evening.

SCIALABBA: Is Linda by your house?

LOEWINGER: No.

SCIALABBA: Can I come over and borrow some money until Monday?

LOEWINGER: Yeah.

SCIALABBA: O.k., I'll see you - what time?

LOEWINGER: About eight.

SCIALABBA: O.k.

LOEWINGER: Right.

SCIALABBA: Bye.

b. On the same date ROBERT LOEWINGER had been observed by a Special Agent of the Federal Bureau of Investigation acting under my supervision entering bungalow #6, Nob Hill Colony Kiamesha Lake, New York at 6:02 P.M.

c. On the same date I observed ROBERT LOEWINGER at 7:52 P.M. driving south on Route 42 from the direction of the Nob Hill Colony, Kiamesha Lake, New York to his residence at 15 Hammond Street, Monticello, New York.

d. On the same date at 8:16 P.M. I observed a white female park a vehicle, bearing New York license MO-129, registered to Thomas Scialabba, 123 Terry Lane, Monticello, New York, opposite 15 Hammond Street, Monticello, New York (the residence of ROBERT LOEWINGER), exit the vehicle, cross the street and enter said residence.

e. On the same date at 8:50 P.M. Special Agents of the Federal Bureau of Investigation acting under my supervision observed the aforesaid white female leave 15 Hammond Street, Monticello, New York, enter the described vehicle and drive away.

f. On the same date at 9:10 P.M. Special Agents of the Federal Bureau of Investigation acting under my supervision observed a white female park the above described vehicle in the vicinity of the building known as 122-129 Terry Lane, Sleepy Hollow Apartments, Monticello, New York, exit the vehicle and enter said building.

g. As more fully set forth in paragraphs 13, 14 and 15 of my affidavit of December 30, 1976 telephone number 914-794-3244 (the answering service) is subscribed to Debra Scialabba, 123 Terry Lane, Apartment 123, Monticello, New York; Apartment 123 of the Sleepy Hollow Apartments is located in the building known as 122-127 Terry Lane, Monticello, New York. On February 18, 1977 the Security Office of the New York Telephone Company advised Katherine Anderson, Clerk, Federal Bureau of Investigation, who in turn advised me, that telephone number 914-794-3244 was still listed to Debra Scialabba, 123 Terry Lane, Apartment 123, Monticello New York and that this telephone was still connected.

17. On January 15, 1977 an incoming call to
914-794-3026 was intercepted at 6:09 P.M.

SAM LEVENTHAL: Hello.

RAY: Got the line, Sam?

LEVENTHAL: Yeah. Uh, St. Johns, 11 1/2 -

RAY: 11 1/2.

LEVENTHAL: Atlanta 2 1/2.

RAY: Atlanta 2 1/2.

LEVENTHAL: Washington 3.

RAY: Washington 3.

LEVENTHAL: Houston 3.

RAY: Houston is 3.

LEVENTHAL: And Phoenix is 4.

RAY: Phoenix is 4.

LEVENTHAL: Now he'll call you tomorrow.

RAY: He'll call me.

LEVENTHAL: Yeah.

RAY: Boy, that's alright.

LEVENTHAL: Now listen!

RAY: Tell him to call early as possible because I only work the (unintelligible) -

LEVENTHAL: Yeah, soon as he gets the line - now listen - instead of mailing that check to me -

RAY: Yeah.

LEVENTHAL: Or - uh, maybe he'll have to mail you, I don't know, but, uh - uh - send it to his address. Take his name down.

RAY: Alright, what is it?

LEVENTHAL: Robert Loewinger, L-O-E-W-I-N-G-E-R.

RAY: L-O-W-E-N-G-

LEVENTHAL: L-O-E-W, I think it is, - uh - Loewinger, L-O-W, no, L-O-W

RAY: Yeah.
LEVENTHAL: E-I-N-G-E-R
RAY: E-I-N-G-E-R
LEVENTHAL: Yeah, care of Men's World,
RAY: Men's World.
LEVENTHAL: Monticello, New York.
RAY: O.K.
LEVENTHAL: That's 12701. And I'll give
him your address -
RAY: O.K.
LEVENTHAL: And he'll straighten out with
you. O.K.?
RAY: Yeah.
LEVENTHAL: Alright, Ray.
RAY: So long.

18. The daily logs of monitored conversations kept by Special Agents of the Federal Bureau of Investigation acting under my supervision and the tape recordings of wire communications monitored pursuant to Judge Griesa's order of December 30, 1976 disclose the following:

a. An unknown male who identified himself as "MR. CARROL" or "MR. CAL" called either telephone number 914-647-3412 or 914-647-3442 on a daily basis from January 6 through January 18, 1977. During this period at least 35 calls from this individual were intercepted. On each occasion he provided either LARRY FRIELICH or HARRY FINEROW with line information concerning sporting events.

b. MORRIS MELAVSKY either called LARRY FRIELICH on 914-647-3442 or was called by FRIELICH from either 914-647-3442 or 914-647-3412 on an almost daily basis.

During the period January 5 through January 16, 1977, at least 12 conversations were intercepted between MELAVSKY and FRIELICH and in each conversation FRIELICH furnished MELAVSKY with the line information shortly after receiving the information from MR. CARROL or MR. CAL.

c. An unknown male who identified himself as "WILLY" called telephone number 914-647-3442 or was called by LARRY FRIELICH from either 914-647-3442 or 914-646-3412 on an almost daily basis. During the period January 5 through January 18, 1977 at least 25 conversations were intercepted between WILLY and either LARRY FRIELICH or HARRY FINEROW. Each of the conversations included the exchange of line information and/or the laying off of bets.

d. An unknown male who identified himself as "THE FOX" called LARRY FRIELICH on either 914-647-3442 or 914-647-3412 at least 11 times between January 5 and January 18, 1977. These calls were received only after FRIELICH first made an outgoing call, identified himself as "MR. A" and left a message for THE FOX to call him. FRIELICH would lay off either horse or sport bets and sometimes receive line information from THE FOX during these calls.

e. An unknown male whom LARRY FRIELICH referred to only as "NUMBER 12" furnished FRIELICH with line information on at least 4 occasions between January 8 and January 15, 1977. On each occasion FRIELICH would make an outgoing call from 941-647-3442, identify himself as "MR. A", and ask for the line.

f. On January 9, 1977 LARRY FRIELICH received a telephone call over 914-647-3442 from an individual who identified himself as "DOC SANDY". Both men discussed laying off of bets on the Super Bowl game, and FRIELICH received a lay off bet from this individual.

19. During the period from January 5 through January 15, 1977 at least 70 incoming calls were intercepted from either ROBERT LOEWINGER or NORMAN WERTHEIMER to SAM LEVENTHAL over telephone number 914-794-8026. The first incoming call during the betting hours was usually for the purpose of giving LEVENTHAL the line information. Subsequent calls from LOEWINGER or WERTHEIMER were received periodically by LEVENTHAL throughout the applicable betting hours. During these calls LEVENTHAL normally relayed all of the wagers he had received up to that time to either LOEWINGER or WERTHEIMER. During these same telephone conversations LOEWINGER or WERTHEIMER would often furnish LEVENTHAL with the latest line changes.

Based upon my experience and training and that of other Special Agents of the Federal Bureau of Investigation in the conduct of gambling investigations it appears that LEVENTHAL is acting as a partner with LOEWINGER and WERTHEIMER in the same bookmaking operation. LEVENTHAL gives all of his wagers to LOEWINGER and WERTHEIMER so that they can adjust their line and lay-off as necessary, based on the wagers accepted by LEVENTHAL in addition to the wagers they accept themselves. LOEWINGER and WERTHEIMER are operating what is commonly known as the main wire room, while LEVENTHAL is located at a sub-wire room.

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20. During the period from January 5 through January 15, 1977 there was a total of five telephone calls from FRIELICH or FINEROW to the answering service maintained by LOEWINGER and WERTHEIMER, 914-794-3244. During this period four calls were placed by LOEWINGER or WERTHEIMER to FRIELICH or FINEROW. During these latter telephone calls the parties discussed the laying off of bets, account balances, specific bettors and line information.

21. In addition to the surveillances of HARRY FINEROW and LEWIS a/k/a "Larry" FRIELICH coming to and from the Country Club Arms apartments, Ellenville, New York described in paragraph 38 d. through o. of my affidavit dated December 30, 1976, a Special Agent of the Federal Bureau of Investigation, acting under my supervision, made the following observations:

a. On February 15, 1977 the Special Agent observed FRIELICH enter the south door of the West Building of the Country Club Arms apartment complex (hereafter "the South Door") at 5:49 P.M.; the Special Agent observed FINEROW enter the South Door at 5:50 P.M.; the Special Agent observed FINEROW exit the South Door at 7:08 P.M.; as of 8:30 P.M. FRIELICH had not exited the South Door.

b. On February 16, 1977 the Special Agent observed a person he recognized as LARRY PUTZER enter the South Door at 5:50 P.M.; the Special Agent observed LARRY PUTZER and FRIELICH exit the South Door together at 7:33 P.M.

22. Informant Number 1 is a reliable informant who has been furnishing information concerning gambling offenses to the Federal Bureau of Investigation for a period in excess of six months. This person has been contacted by agents of the Federal Bureau of Investigation on at least a bi-weekly basis, and the information he has given has been corroborated by independent investigation and has always proved to be accurate. This information has resulted in at least three arrests and three convictions for gambling violations.

Informant Number 1 is a personal acquaintance of LEWIS, a/k/a "Larry" FRIELICH, and recognizes his voice. Informant Number 1 has advised me that during January and February 1977 he has been placing wagers on sporting events at telephone numbers 914-647-3442 and 914-647-3412 with LARRY FRIELICH. Informant Number 1 advised me that he has placed wagers over one of these telephone numbers as recently as mid-February 1977.

23. Informant Number 2 is a reliable informant who has been furnishing information concerning Federal offenses, including gambling offenses, to the Federal Bureau of Investigation for a period in excess of one year. This individual has been contacted by agents of the Federal Bureau of Investigation on at least a monthly basis, and the information he has given has been corroborated by independent investigation and has always proved to be accurate. This information has resulted in at least six arrests and convictions for gambling violations.

Informant Number 2 is a personal acquaintance of MORRIS MELAVSKY, a/k/a "MOE", and as such has had conversations with MELAVSKY over the past five years concerning MELAVSKY's gambling activities. On numerous occasions over this period of time Informant Number 2 has placed wagers on horse races and sporting events personally with MELAVSKY. The most recent conversation between Informant Number 2 and MELAVSKY was in February 1977. In mid-February 1977 MELAVSKY told Informant Number 2, who in turn advised me, that he, MELAVSKY, continued to accept wagers on horse races and sporting events.

MINIMIZATION

24. In order to minimize the likelihood of intercepting conversations that do not pertain to the offenses specified in paragraph 2, supra, affiant proposes that in addition to customary minimization procedures, interception of wire communications emanating to and from telephone number 914-794-0960 shall occur only during normal betting hours as determined from advise of informant bettors, from my knowledge and experience and that of other Special Agents in the investigation of gambling violations, and from physical surveillance conducted during this investigation, as follows:

Monday through Friday	5:30 P.M. to 8:00 P.M.
Saturday	11:30 A.M. to 2:15 P.M. 5:30 P.M. to 8:00 P.M.
Sunday	11:30 A.M. to 2:15 P.M.

CONCLUSION

25. Based upon my six years of experience in the conduct of gambling investigations, and the experience of other Special Agents of the Federal Bureau of Investigation with whom I have discussed the facts of this investigation, it is my opinion that ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABBA, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINERON, LEWIS a/k/a "LARRY" FRIELICH, and other

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persons associated with them whose identities are as yet unknown are actively engaged in the conduct of an illegal sports gambling business. This conclusion is predicated upon the informant information referred to in this affidavit and in my affidavit of December 30, 1976, the patterns of conduct revealed by surveillances, and the contents of the wire communications overheard and monitored pursuant to the order of the Honorable Thomas P. Griesa, dated December 30, 1976. These patterns of conduct are entirely consistent with the operation of a large scale integrated sports gambling business involving laying-off among separate operations.

NEED FOR ELECTRONIC SURVEILLANCE

26. Based upon my experience in conducting gambling investigations, and the experience of other Special Agents of the Federal Bureau of Investigation with whom I have discussed the facts of this investigation, and upon all of the information contained herein, I believe that the interception of wire communications requested herein is the only available investigative technique remaining which has a reasonable likelihood of securing the additional evidence needed to prove beyond a reasonable doubt that ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABBA, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, and others whose identities are as yet unknown are engaged in the operation of an illegal gambling business in violation of Title 18, United States Code, Section 1955, and are conspiring to do so in violation of Title 18, United States Code, Section 371. The factors contributing to my belief are set forth in the following paragraphs.

27. The confidential reliable informants previously described in the affidavit of December 30, 1976 (Mr. A, Mr. B, Mr. C, Mr. D, and Mr. E) and the confidential reliable informants described in this affidavit (Informant Number 1 and Informant Number 2) are unwilling to testify or have their identities disclosed because of the possibility of retribution and their fear of being physically harmed.

28. Surveillances of the members of the gambling conspiracy do not establish beyond a reasonable doubt their participation in the operation of an illegal gambling business. Continued physical surveillance offers little chance of obtaining the necessary evidence. At best, it could offer only additional corroborating observations of the type described above in this affidavit. At worst, additional surveillance would arouse the suspicions of the suspects, rendering their ultimate detection more difficult. The likelihood of arousing suspicions is particularly strong in the relatively small, rural towns involved in this investigation where agents and police are known to residents. Outsiders, at least during the winter months, are easily spotted.

29. My experience and the experience of other Special Agents of the Federal Bureau of Investigation have shown that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence necessary to prove all the elements of the offense. My experience and the experience of other Special Agents who work on gambling cases have shown that gamblers frequently do not keep permanent records. Such records that are kept usually do

not reveal the details of the lay-off operation or the actual identities of the participants, or their roles in the operation.

30. Although the names of several bettors with the LOEWINGER, LEVENTHAL and FINEROW - MELAVSKY operations have been obtained, I am still convinced that an investigative contact at this time would prove unproductive because it would serve only to alert the participants as to the existence of and the scope of the investigation.

31. As previously stated in my affidavit of December 30, 1976, I and other Special Agents of the Federal Bureau of Investigation have given thorough consideration to infiltration of this group. However, based on my experience in this investigation and the experience of other Special Agents knowledgeable in conducting sports gambling operations, it does not appear that this procedure would be likely to succeed. As previously noted, a penetration of the LOEWINGER operation was attempted in the summer of 1973 by a Special Agent of the Federal Bureau of Investigation, but was unsuccessful.

32. Telephone toll records, although useful, have their limitations. Toll records for telephones being utilized in a bookmaking operation, even when they reveal contacts between the principals, do not reveal the nature or the purpose of the contacts. Further, a review of the 1976-1977 Telephone Directory for the Sullivan County area reveals that telephone calls between the 794 (Monticello) and 647 (Ellenville) exchanges are local calls. Only calls placed by the operator at customer request as well as calls outside the local calling area are billed on the toll statement as

separate items. Thus calls within the local calling area will not be reflected on the bills of the subscriber.

33. I have discussed with Assistant United States Attorney T. Gorman Reilly subpoenaing the individuals known to be involved. He advised that the subjects of this case are unlikely to voluntarily testify since they face criminal prosecution. He further advised that he has considered grants of immunity to compel testimony from the subjects of this investigation, but believes that there is insufficient knowledge of the roles of various individuals, the identities of their co-conspirators, and the scope of their overall knowledge of the operation, to make a decision at this time.

34. The use of a pen register alone without an accompanying Title III electronic surveillance order is not an available alternative. As a result of the decision of the Second Circuit in Application of the United States in the matter of an Order Authorizing the Use of a Pen Register, 538 F.2d 956 (1976), certiorari granted, the New York Telephone Company will not provide certain services and equipment essential to the installation of a pen register. It will provide such services and equipment only in connection with court authorized electronic surveillance.

35. The use of the answering service (914-794-3244) by ROBERT LOEWINGER and NORMAN WERTHEIMER to screen all callers has been carefully designed to prevent detection of their gambling activities. Significantly, DEBRA SCIALABBA receives only incoming calls and never makes an outgoing call. The toll records of telephone number 914-794-0960 for the periods ending January 3, 1977 and February 3, 1977 make

it clear that a significant amount of gambling activity - be it the receiving of line information, laying-off, or accepting large wagers - is taking place over this telephone. The only effective means of obtaining evidence of this activity by the two principal members of the gambling business under investigation is through electronic surveillance.

36. In view of the above it is manifest that normal avenues of investigation have been attempted and have failed, are unlikely to succeed if tried, or appear to be too dangerous to be attempted. Interception of wire communications is the only reasonable and possible investigative procedure remaining which can furnish the required quantum of evidence needed to prove that ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABBA, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, and other whose identities are as yet unknown have conducted and are conducting an illegal gambling business within the State of New York; which illegal gambling business involves five or more persons and has a gross revenue of \$2,000 or more in any single day or has been in substantially continuous operation in excess of thirty (30) days, thereby being in violation of Title 18, Section 1955, United States Code, and conspiracy to commit such offenses in violation of Title 18, Section 371, United States Code. Interception is necessary for the wire communications of ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA SCIALABBA, SAM LEVENTHAL, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH and others whose identities are as yet unknown to and from telephone number 914-794-0960, subscribed to Arthur Cohen, Bungalow #6, Nob Hill Colony, Kiamesha Lake, New York.

37. Inasmuch as the illegal gambling business described herein is a continuing conspiracy, the evidence sought through the interception of wire communications emanating to and from the above locations will be obtained on a continuing basis on several days succeeding the first interception of communications, which is the objective of this request. Therefore, it is requested that these interceptions not be terminated until the roles of the above listed subjects, and others whose identities are as yet unknown, their method of operation and the full nature and scope of the conspiracy involved herein is determined or for a period of twenty (20) days from the date of the proposed Order, whichever is earlier. If the telephone number used in conducting this gambling operation is changed, an amended affidavit will be resubmitted as the new telephone number is determined.

Section 802 of Title VIII, entitled "Syndicated Gambling of the Organized Crime Control Act 1970," Public Law 91-452, 91st Congress, approved October 15, 1970, amended Chapter 95, Title 18, United States Code, by adding a new section, Section 1955, "Prohibition of Illegal Gambling Businesses." Section 801 of Title VIII of the Act contains a special finding that illegal gambling involves widespread use of and has an effect upon interstate commerce and the facilities thereof.

WHEREFORE, I submit the information supplied by the reliable informants and the information developed in the course of the investigation, as set forth in my affidavit of December 30, 1976 and as set forth in all the preceding paragraphs of this affidavit, provide sufficient facts to establish that ROBERT LOEWINGER, NORMAN WERTHEIMER, DEBRA

SCIALABBA, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, and other whose identities are as yet unknown, have been, are, and will continue to commit offenses involving the use of telephone lines and instruments for number 914-794-0960 in a conspiracy to conduct an illegal gambling enterprise in violation of Sections 1955 and 371 of Title 18, United States Code.

CARL W. AMADITZ
Special Agent
Federal Bureau of Investigation

Subscribed and Sworn to before
me this day of March, 1977.

TGR:lg
12-624UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE APPLICATION : Misc. No. M19-97
 OF THE UNITED STATES FOR AN ORDER : ORDER AUTHORIZING
 AUTHORIZING THE INTERCEPTION OF : INTERCEPTION OF
 WIRE COMMUNICATIONS : WIRE COMMUNICATIONS

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TO: Special Agents for the Federal Bureau of Investigation,
 United States Department of Justice

Application under oath having been made before me by Assistant United States Attorney T. GORMAN REILLY, an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code, for an order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

(a) there is probable cause to believe that ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELSON, ROBERT HANNON, and others as yet unknown have committed and are committing offenses involving wire communications to conduct an illegal sports gambling business in violation of Article 225 of the New York State Penal Law, involving five or more persons, and that has a gross revenue of \$2,000 in any single day and has been and remains in substantially continuous operation for a period in excess of thirty (30) days, thereby being in violation of Title 18, United States Code, Section 1955, and a conspiracy to commit such offenses in violation of Title 18, United States Code, Section 371.

(b) there is probable cause to believe that particular wire communications of ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, LEWIS a/k/a "LARRY" FRIELICH, and others as yet unknown concerning these offenses will be obtained through the interception, authorization for which has been applied for. In particular, these wire communications will reveal the identities and roles of all participants in the illegal gambling business, the places, telephone lines, instruments and locations used in furtherance of the gambling business, the amounts of monies wagered, the amounts of monies owed to or by bettors and other participants in the gambling business, the distribution of contraband monies and records obtained by and used in the illegal gambling business, the methods of record keeping and the meaning thereof, the methods of operation used by the participants in the gambling business, and the full nature and scope of the conspiracy. In addition, the communications are expected to constitute admissible evidence of the offenses.

(c) normal investigative procedures either have been tried and have failed or reasonably appear unlikely to succeed if continued, or reasonably appear unlikely to succeed if tried.

(d) there is probable cause to believe that the following telephone lines and instruments have been used, are being used, and will continue to be used by the below named persons in the commission of the above described offenses:

(1) 914-794-3244 located at 123 Terry Lane, Apartment 123 Monticello, New York, subscribed to by Debra Scialabba, and used by ROBERT LOEWINGER, NORMAN WERTHEIMER,

AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244,
and others as yet unknown;

(2) 914-794-8026 located at 74 Florida Building,
The Delano Hotel, Old Liberty Road, Monticello, New York,
subscribed to by Gil Hellinger, i by SAM LEVENTHAL
and others as yet unknown;

(3) & (4) 914-647-3444 914-647-3412, located
at Apartment 29B, Nevele Road, Ellenville, New York, sub-
scribed to by Lewis Frielich, and used by LEWIS a/k/a "LARRY"
FRIELICH and others as yet unknown;

(5) & (6) 914-647-6691 and 914-647-6358, located
at 16 Sandra Street, Ellenville, New York, subscribed to by
MORRIS MELAVSKY, and used by MORRIS MELAVSKY, and others as
yet unknown.

WHEREFORE, it is hereby ordered that Special
Agents of the Federal Bureau of Investigation, United States
Department of Justice, are authorized, pursuant to applica-
tion authorized by the Attorney General of the United States,
the Honorable Edward H. Levi, to exercise the power conferred
on him by Section 2516 of Title 18, United States Code: to
intercept wire communications of the below listed persons
and others as yet unknown, concerning the above-described
offenses to and from the following telephones:

(1) 914-794-3244 located at 123 Terry Lane,
Apartment 123 Monticello, New York, subscribed to by Debra
Scialabba, and used by ROBERT LOEWINGER, NORMAN WERTHEIMER,
AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244,
and others as yet unknown;

(2) 914-794-8026 located at 74 Florida Building,
The Delano Hotel, Old Liberty Road, Monticello, New York,
subscribed to by Gil Hellinger, and used by SAM LEVENTHAL
and others as yet unknown;

(3) & (4) 914-647-3442 and 914-647-3412, located at Apartment 298, Nevale Road, Ellenville, New York, subscribed to by Lewis Frielich, and used by LEWIS a/k/a "LARRY" FRIELICH and others as yet unknown;

(5) & (6) 914-647-6691 and 914-647-6358, located at 16 Sandra Street, Ellenville, New York, subscribed to by MORRIS MELAVSKY, and used by MORRIS MELAVSKY and others as yet unknown.

Such interceptions shall not automatically terminate when the types of communication described above in paragraph (b) have first been obtained but shall continue until communications are intercepted which reveal the manner in which ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, ROBERT HANMON, and others as yet unknown, participate in the illegal gambling business, the identities and roles of their confederates and their associates in the illegal gambling business, the places, telephone lines, instruments and locations used in furtherance of the gambling business, the amounts of monies wagered, the amounts of monies owed to or by bettors and other participants in the gambling business, the distribution of contraband monies and records obtained by and used in the illegal gambling business, the methods of record keeping and the meaning thereof, the methods of operation used by the participants in the gambling business, and the full nature and scope of the conspiracy or for a period of twenty (20) days from the date of this Order, whichever is earlier.

IT IS FURTHER ORDERED that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the service that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company to be compensated for by the applicant at the prevailing rates.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable after signing of this Order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective or, in any event, at the end of twenty (20) days from the date of this Order.

PROVIDING FURTHER, that interception shall occur only as follows:

<u>TELEPHONE NUMBER</u>	<u>DAY OF WEEK</u>	<u>HOURS</u>
914-794-3244	Monday through Saturday	11:15 a.m. to 2:15 p.m. 5:15 p.m. to 8:15 p.m.
	Sunday	11:15 a.m. to 2:15 p.m.
914-794-8026	Monday through Friday	5:30 p.m. to 8:00 p.m.
	Saturday	11:30 a.m. to 2:15 p.m. 5:30 p.m. to 8:15 p.m.
	Sunday	11:30 a.m. to 2:15 p.m.
914-647-3442 and 914-647-3412	Monday through Friday	11:30 a.m. to 1:45 p.m. 5:30 p.m. to 8:15 p.m.
	Saturday	11:30 a.m. to 2:15 p.m. 5:30 p.m. to 8:15 p.m.
	Sunday	11:30 a.m. to 2:15 p.m.

<u>TELEPHONE NUMBER</u>	<u>DAY OF WEEK</u>	<u>HOURS</u>
914-647-6691 and 914-647-6358	Monday through Friday	5:45 p.m. to 8:15 p.m.
	Saturday	11:45 a.m. to 2:15 p.m. 5:45 p.m. to 8:15 p.m.
	Sunday	11:45 a.m. to 2:15 p.m.

PROVIDING ALSO, that T. GORMAN REILLY shall provide the Court with a report on or about the fifth, tenth and fifteenth day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

UNITED STATES DISTRICT JUDGE

Dated: New York, New York
December , 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

7/27/77
COPY RECEIVED
S.D.N.Y.
R.J.

-----x
UNITED STATES OF AMERICA,

-against-

NOTICE OF MOTION

#77CR426

ROBERT LOEWINGER, et al,

Defendants
-----x

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of LOUIS R. ROSENTHAL, and upon the annexed memorandum of law, as well as upon all of the pleadings and proceedings heretofore had herein, the undersigned will move this Court on behalf of ROBERT LOEWINGER, before the Honorable John M. Cannella, Judge in the United States District Court for the Southern District of New York, Foley Square, New York, New York at a date to be set by the Court for an order suppressing the evidence derived from the Electronic Surveillance Order authorized by Thomas P. Griesa on December 30, 1976 and on March 9, 1977 by Judge Frederick Van Pelt Bryan and all evidence constituting the fruits thereof, and for such other and further relief as to this Court may seem just and proper.

DATED: Brooklyn, New York
July 25, 1977

Yours, etc.

LOUIS R. ROSENTHAL
16 Court Street
Brooklyn, New York 11241
(212) 855-2600

TP: ROBERT FISKE, ESQ.
United States Attorney
ATTN: DENISE COTE
ASSISTANT UNITED STATES ATTORNEY

CLERK, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

58

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

AFFIDAVIT

-against-

ROBERT LOEWINGER, et al,

Defendants
-----X

LOUIS R. ROSENTHAL, being duly sworn on oath deposes
and says:

I am the attorney for the defendant ROBERT LOEWINGER
and am fully familiar with the facts and circumstances herein. I
make this affidavit in support of the within motion which seeks
to suppress evidence gathered as a result of certain electronic
wiretapping.

The defendant was indicted with ter other persons and
charged with conspiring to violate Title 18, U.S.C., Section 1955,
the maintenance of a gambling operation. He is also charged with
the substantive violation of Title 18, U.S.C., Section 1955.

I have reason to believe that wiretapped conversations
purported to be those of my client ROBERT LOEWINGER, will be
sought to be offered into evidence. These intercepts were made
pursuant to two wiretap orders. The first order was signed by the
Honorable Thomas P. Griesa on December 30, 1976 and the second
was signed by the Honorable Van Pelt Bryan on March 9, 1977.

The first order (December 30, 1976) is based upon the

affidavit of Agent Amaditz which goes on for thirty-nine pages attempting to justify the issuance of a wiretap order for certain telephones allegedly employed by the various parties in the conduct of a gambling operation.

The second order (March 9, 1977) relies most heavily on the conversations intercepted pursuant to the first order of Judge Griesa and the observations that followed such interceptions.

A careful reading of the Agent's affidavit in support of the first order can only result in the suppression of these interceptions on the following grounds.

An analysis of the first affidavit does not provide any support for a finding of probable cause that the persons mentioned, in the context of their reference, were involved in any prohibited aspect of a single "illegal gambling business." The most favorable interpretation to the prosecution would indicate that there were three or four independent bookmakers who occasionally laid off bets with one of their number. This would not satisfy the necessity of showing probable cause to believe that a 1955 violation was taking place in that at least five individuals were involved in a single illegal gambling business.

The defendant requests to know whether any information concerning this alleged conspiracy was supplied to the Government from any state or local law enforcement agencies such as New York, Pennsylvania or New Jersey state law enforcement agencies. The reason for this request of disclosure is to permit counsel for the

defendant to examine into the constitutionality of the procedures followed by any cooperating state police agencies whom may have furnished information to the federal authorities in connection with the prosecution of these alleged offenses. If such information was supplied, a hearing will be required to determine if illegal wiretapping had taken place.

The defendant reserves the right to make any and all additional motions which are required as a result of any discovery or the grant of other motions embodied in this application.

The defendant joins in the applications made by any other defendants in this case where the relief requested is not inconsistent with the motions made by this defendant.

It is therefore respectfully requested that this Court grant all of the relief requested herein and grant such other and further relief as is just under all of the circumstances.

DATED: Brooklyn, New York
July 25, 1977

LOUIS R. ROSENTHAL

Sworn to before me this
day of , 1977.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

- v - :

ROBERT LOEWINGER, et al., :

Defendants. :

GOVERNMENT'S AFFIDAVIT
IN OPPOSITION TO
MOTIONS TO SUPPRESS
WIRETAPS

77 C. 426 (JMC)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

KENNETH V. HANDAL, being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney
in the Office of Robert B. Fiske, Jr., United States
Attorney for the Southern District of New York, and I
am in charge of the prosecution of the above-captioned
case. I submit this affidavit in opposition to the
defendants' motions to suppress wire communications inter-
cepted pursuant to orders of this Court signed on December
30, 1976 and March 9, 1977.

2. The Government submits that an evidentiary
hearing to determine probable cause should not be held in
this case because neither the defendants nor their lawyers
have made allegations controverting the factual statements
in the affidavits submitted by the Government in support of
the wiretaps. The determination of probable cause is to be
made on the basis of the Government affidavits themselves.

3. The Government further submits that probable
cause clearly existed for the December 30, 1976 and the
March 9, 1977 wiretap orders, as set forth below. The
informants' information and the subjects' patterns of conduct
as recorded in the affidavits demonstrated probable cause

(62)

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to believe that the subjects were involved in the operation of a large scale integrated sports gambling business involving laying-off of bets among separate operations, in violation of Title 18, United States Code, Sections 1955 and 371. Consequently, the defendants' suppression motions should be denied.

PROBABLE CAUSE EXISTED FOR
THE DECEMBER 30, 1976 ORDER

4. On December 30, 1976, Judge Thomas P. Griesa signed orders authorizing interception of wire communications and for the use of pen registers or similar devices on the following telephone numbers: 914-794-3244; 914-794-3026; 914-647-3442; 914-647-3412; 914-647-6691; 914-647-6358.

5. In support of the Government's application for the December 30, 1976 orders, the Government submitted the affidavit of Carl W. Amaditz, Special Agent of the Federal Bureau of Investigation, dated December 30, 1977. ("First Amaditz Aff."). Amaditz set forth in detail the probable cause that communications related to illegal gambling would be overheard on the telephone numbers listed above. As Amaditz stated in the affidavit, he has been investigating gambling matters as an agent of the Federal Bureau of Investigation for more than six years. (First Amaditz Aff. ¶ 4).

6. Amaditz set out in considerable detail the information comprising probable cause. This information was provided by confidential informants--identified as Messrs. A, B, C, D, and E--and by the investigation conducted by the Federal Bureau of Investigation ("FBI"). For the Court's convenience, the Amaditz affidavit set forth the information in three distinct sections due to the numerous subjects and telephones involved in the investigation. Accordingly, the discussion in this affidavit will be set forth pursuant to these three sections.

A. Loewinger Operation: 914-794-3244, listed to Debra Scfalabba, 123 Terry Lane, Apartment 123, Monticello, New York. (First Amaditz Aff. ¶ 13).

7. Amaditz set forth in detail the information which two reliable confidential informants, Mr. A and Mr. B, provided the FBI that Robert Loewinger, Norman Wertheimer, and Sam Leventhal were using telephone number 914-794-3244 in connection with a sports gambling operation. As to the reliability of these informants, Amaditz unhesitatingly said of Mr. A, who has been providing information for more than ten years and whose information has led to more than ninety gambling convictions, that "[t]he information he has given ... has always proved to be accurate". As to Mr. B, Amaditz stated that he had been furnishing information to the FBI on a bi-weekly basis for more than one year and his information resulted in at least four arrests and convictions for gambling offenses. Mr. B's information "has been corroborated by independent investigation and has always proved to be accurate." (First Amaditz Aff. ¶¶ 7-8).

8. Amaditz stated that Mr. A is a personal acquaintance of Loewinger, Wertheimer, and Leventhal. From early July 1976 through the second week of December 1976 Mr. A provided information (to Senior Investigator Tripodo of the New York State Police who in turn advised Amaditz) that: on the basis of his own betting activities he knew Loewinger and Wertheimer to operate a bookmaking and sports gambling operation through the use of an answering service, telephone number 914-794-3244, between the hours of 11:30 a.m. and 2:00 p.m. and 5:30 p.m. and 8:00 p.m.; that he had placed bets as recently as December 12, 1976, ordinarily with Wertheimer and sometimes

with Loewinger, both of whose voices he recognizes; that from his conversations with Loewinger and Wertheimer as recently as the first seven days of December 1976 he knew this operation to handle well in excess of \$2,000 on most days; and that as recently as during December 1976 he overheard discussions between Wertheimer and Leventhal concerning Leventhal's laying off bets with the Loewinger operation. (First Amaditz Aff. ¶ 16).

9. Amaditz stated that Mr. B, a personal acquaintance of Morris Melavsky, related to him the following information, which he was told by Melavsky in conversations occurring between April and December 1976: that Loewinger and Wertheimer were partners in the largest-volume book-making operation in the Catskill Mountain area and had several accounts out of state and in New York City; and that Melavsky regularly lays off bets with Loewinger. (First Amaditz Aff. ¶ 17).

10. In addition to the information supplied to the FBI by the informants, Amaditz also set forth in detail the results of physical surveillance of Loewinger and Wertheimer conducted by FBI agents, which corroborated the information supplied by the informants. This physical surveillance evidenced numerous meetings between Wertheimer, who had no visible means of employment, and Loewinger at a clothing store owned by the latter, as well as numerous observations of Loewinger and Wertheimer entering and leaving the premises of Nob Hill Colony, Kiamesha Lake, New York, at approximately the beginning and the end, respectively, of what Mr. A had said were the betting hours for the operation. (First Amaditz Aff. ¶ 18).

11. As reflected in the five, ten and fifteen day reports filed with the Court, approximately 266 gambling related conversations were intercepted on telephone number 914-794-3244 between December 30, 1976, when Judge Griesa signed the 20-day order, and January 13, 1977, which was the last day included in the fifteen day report filed with the Court.

B. Leventhal Operation: 914-794-8026,
listed to Gil Fellingner, 74 Florida
Building, The Delano Hotel, Old Liberty
Road, Monticello, New York. (First
Amaditz Aff. ¶ 29).

12. In connection with the telephone number 914-794-8026, Amaditz set forth the information which Mr. A and Mr. C, both reliable confidential informants provided the FBI with respect to the gambling activities of Sam Leventhal. As to the reliability of Mr. A, see paragraph 5 of this affidavit. As to the reliability of Mr. C, Amaditz flatly stated that he has "found Mr. C's information to be extraordinarily correct." Amaditz demonstrated Mr. C's proven reliability with several specific examples of information provided by Mr. C that show his familiarity with Leventhal's activities. Mr. C's information in each instance was corroborated by independent investigation (First Amaditz Aff. ¶ 9).

13. Amaditz stated that Mr. A advised Tripodo, who in turn advised Amaditz: that he was aware of a gambling operation in Monticello being conducted by Sam Leventhal; that between the first week of July 1976 and mid-August 1976 he had placed bets with Leventhal over one telephone number, and from mid-August until the last week of September over another telephone number; that he was advised during the second week of September that Leventhal was also accepting

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wagers over a second telephone number; that by the last week of September Leventhal was no longer accepting wagers over these latter two numbers; and that as recently as during the week of December 5, 1976, he had overheard discussions between Wertheimer and Leventhal concerning Leventhal's laying off bets with the Loewinger operation. (First Amaditz Aff. ¶ 19).

14. Amaditz stated in the affidavit that he was advised by Mr. C, an acquaintance of Leventhal who knows his voice: that he had been placing wagers on sporting events with Leventhal on numerous occasions and as recently as December 12, 1976 on telephone number 914-794-8026; that he had settled accounts with Leventhal as recently as the second week of December 1976 at the social club on Jefferson Street in Monticello, New York, and has observed others doing so at this location; and that wagering hours for the Leventhal operation are approximately 6:00 p.m. through 7:30 p.m. Monday through Saturday, and approximately 11:45 a.m. through 2:00 p.m. on Saturday and Sunday. (First Amaditz Aff. ¶ 20).

15. The Amaditz affidavit also set forth in detail the results of the FBI's independent investigation corroborating the informants' information. The subscriber of the telephone number used by Mr. A to place bets with Leventhal in July and mid-August 1976, was determined, and physical surveillance of the subscriber's address showed that Leventhal entered and exited these premises at the appropriate bookmaking hours as stated by Mr. C. Investigation in connection with the telephone number used by Mr. A to place bets with Leventhal in the latter part of August and in September 1976 provided the same results. The subscriber's name and the address involved were different. (First Amaditz Aff. ¶¶ 21-28).

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16. Amaditz stated that the telephone number used by Mr. C to place bets with Leventhal, 914-794-8026, was found to be subscribed to by Gil Hellinger, 74 Florida Building, the Delano Hotel, Old Liberty Road, Monticello, New York. Surveillance of this address showed Leventhal entering and exiting at approximately the appropriate bookmaking hours, as stated by Mr. C. (First Amaditz Aff. ¶¶ 29-31).

17. Moreover, physical surveillance of Leventhal indicated numerous meetings between him and Loewinger, with whom, Mr. A had advised, Leventhal was laying off bets. (First Amaditz Aff. ¶ 32).

18. As reflected in the five, ten, and fifteen day reports filed with the Court, approximately 315 gambling related conversations were intercepted on telephone number 914-794-8026 between December 30, 1976, when Judge Grima signed the 20-day order, and January 13, 1977, which was the last day included in the fifteen day report filed with the Court.

C. Melavsky Operation: 914-647-3442 and ~~914-647-3412~~, listed to Lewis Frielich, Apartment 29B, Country Club Arms Apartments, Nevele Road, Ellenville, New York; and 914-647-6691 and 914-647-6353, listed to Morris Melavsky, 16 Sandra Street, Ellenville, New York. (First Amaditz Aff. ¶ 33).

19. In connection with the telephone numbers listed above, Amaditz set forth in his affidavit information from three reliable confidential informants, Mr. D, Mr. B, and Mr. E, that Morris Melavsky, Lewis Frielich, Harry Finerow, "Larry" Putzer and "Bobby" Hannon were engaged in illegal gambling offenses in Ellenville, New York. As to the reliability of Mr. D, Amaditz stated that he had been providing information concerning gambling offenses to the

(68)

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FBI for more than one year and that agents were in contact with him on a weekly basis. Mr. D's information "has been corroborated by independent investigation and has always proved to be accurate" and has resulted in five arrests and five convictions for gambling violations. As to the reliability of Mr. B., see paragraph 5 of this affidavit. With respect to Mr. E, Amaditz stated that he has been providing information to the FBI for more than two years on at least a monthly basis, that his information has been corroborated and has proven to be accurate, and has resulted in seven gambling convictions. (First Amaditz Aff. ¶¶ 10-11).

20. The Amaditz affidavit stated that Mr. D, who is personally acquainted with Melavsky and Frielich, advised Amaditz during December 1976: that for the past eight months he had been placing wagers on horse races and sporting events at telephone numbers 914-647-3442 and 914-647-3412; that he was given these numbers by Melavsky, who told him this was part of a gambling operation conducted by himself and Finerow; that as recently as the week of December 12, 1976 he had placed wagers at these numbers with Frielich, whose voice Mr. D. recognizes; that on the basis of his own betting activities he knows the operation is conducted from approximately 11:45 a.m. until 1:30 p.m. Monday through Friday, 11:45 a.m. until 2:00 p.m. Saturday and Sunday, and 5:45 p.m. until 8:00 p.m. Monday through Saturday. (First Amaditz Aff. ¶ 35).

21. The Amaditz affidavit further stated that Mr. B, an acquaintance of Melavsky and Finerow, provided the following information to Amaditz: During December 1976 Mr. B advised that from conversations with Finerow

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and Melavsky over the prior three years, most recently during the second week of December 1976, he knew them to have been conducting a bookmaking operation in Ellenville for at least five years; that he has placed wagers with Melavsky at Melavsky's home telephone numbers 914-647-6691 and 914-647-6358 as recently as the second week of December 1976; that on the basis of his own activities he knows the approximate betting hours to be 6:00 to 8:00 p.m. Monday through Saturday, and 12 noon to 2:00 p.m. on Saturday and Sunday; Mr. E. advised in October 1976 that he personally settled accounts with Melavsky at the Ellenville Taxi stand, which was operated by Melavsky, and observed Melavsky and Finerow settle with bettors at this location; that Melavsky told Mr. E that Finerow handled most of the bookmaking at Tamarack Lodge in Greenfield Park, New York; that Melavsky told Mr. E of the involvement of Finerow, Putzer and Hannon in his bookmaking operation. (First Amaditz Aff. ¶ 36).

22. Amaditz stated that Mr. E, who is acquainted with Melavsky and Finerow, advised Amaditz: that as recently as the week of December 5, 1976, Mr. E was told by Finerow that he and Melavsky were partners in a bookmaking operation; that he had placed bets on horse races and sporting events with Melavsky and Finerow as recently as mid-December 1976; during the summer of 1976 Mr. E advised that he had observed and had been told by Melavsky that he uses his taxi company to pick up wagers and pay off bettors at the local hotels and resorts; and that Mr. E was told in early November 1976 by Hannon that he worked for Finerow. (First Amaditz Aff. ¶ 37).

23. As set forth by Amaditz, physical surveillance of Melavsky and Frielich between June 28, 1976 and December 13, 1976 indicated their arrivals and departures during the appropriate bookmaking hours at the addresses where they subscribed to the telephone numbers sought to be intercepted, the Sandra Lane address for Melavsky and the Country Club Arms address for Frielich, thus corroborating the information supplied by Mr. D and Mr. B. Further corroboration of the information of the three informants is provided by the physical surveillance that indicated meetings at the Ellenville Taxi office between Frielich and Melavsky and Finerow and Melavsky, and which also showed various arrivals and departures of Frielich, Finerow and Hannon at Melavsky's address and at Frielich's address, during and around the bookmaking hours. (First Amaditz Aff. ¶ 38).

24. As set forth by Amaditz, physical surveillance further indicated meetings between October 18, 1976 and December 13, 1976 among Wertheimer, Melavsky, Finerow and Frielich, as well as meetings between Leventhal and Frielich at the County Seat Social Club, 46 Jefferson Street, Monticello, New York, which was where Mr. C. had advised that Leventhal settled his accounts. (First Amaditz Aff. ¶¶ 39-40).

25. Amaditz also stated that independent FBI investigation showed that Loewinger, Wertheimer, Leventhal and Melavsky had records of prior arrests and convictions for the operation of illegal gambling businesses. (First Amaditz Aff. ¶¶ 41-44).

26. As reflected in the five, ten and fifteen day reports filed with the Court, approximately 476 gambling related conversations were intercepted on telephone numbers 914-647-3442, 914-647-3412, 914-647-6691, and 914-647-6358 between December 30, 1976, when Judge Griesa signed the 20-day order, and January 13, 1977, which was the last day included in the fifteen day report filed with the Court.

PROBABLE CAUSE EXISTED
FOR THE MARCH 9, 1977 ORDER

27. On March 9, 1977, Judge Fredrick Van Pelt Bryan signed orders authorizing the interception of wire communications and for the use of a pen register or similar device on telephone number 914-794-0960, listed to Arthur Cohen, Bungalow # 6, Nob Hill Colony, Kismesha Lake, New York.

28. In support of the Government's application for the March 9, 1977 orders, the Government submitted the affidavit of Carl W. Amaditz, Special Agent of the Federal Bureau of Investigation, dated March 9, 1977 ("Second Amaditz Aff.") which affidavit incorporated by reference the facts alleged in Amaditz's affidavit of December 30, 1977. Amaditz explained that during the period of the electronic surveillance pursuant to Judge Griesa's December 30, 1977 order, although many gambling related conversations had been intercepted, none of the known subjects of the investigation had made outgoing calls directly to either Loewinger or Wertheimer. Instead, Loewinger and Wertheimer made only outgoing calls to the other subjects, with one Debra Scialabba operating an answering or call-back service on telephone number 914-794-3244 for Loewinger and Wertheimer. As transcripts of intercepted telephone calls included in the Amaditz affidavit demonstrated, Leventhal, Finerow, Frielich and others contacted Loewinger and Wertheimer through Scialabba in order to exchange betting information.

A 74

This procedure prohibited determination of the telephone number used by Loewinger and Wertheimer by means of pen registers. (Second Amaditz Aff. ¶ 7).

29. As related by Amaditz in the affidavit, however, physical surveillance of Loewinger and/or Wertheimer on eighteen different occasions between January 6, 1977 and February 13, 1977 showed them entering or leaving the premises of the Nob Hill Bungalow Colony, Kiamesha Lake, New York, two miles north of Monticello, at the standard bookmaking hours (Second Amaditz Aff. ¶ 8), as had also been shown in connection with the December 30, 1976 orders (see paragraph 10 of this affidavit). Further surveillance and investigation pinpointed Bungalow #6 as the meeting place of Loewinger and Wertheimer. Amaditz stated that telephone number 914-794-0960 was subscribed to at that address by one Arthur Cohen. Amaditz stated that further investigation revealed among other things: that when Wertheimer and Loewinger were observed to be on the premises of Bungalow #6, dialing 914-794-0960 at the same time incoming calls were placed by Wertheimer to Scialabba at the answering service resulted in busy signals; and that the billing card for telephone number 914-794-0960 listed as a reference telephone number the number at Loewinger's clothing store. Moreover, examination of the toll records for telephone number 914-794-0960 showed, among other things: that almost all of the 442 long-distance telephone calls made from that number between December 4, 1976 and January 3, 1977 were made during standard bookmaking hours and took less than three minutes to complete; and that in approximately twenty-six instances between January 4, 1977

73

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and February 3, 1977, long-distance call-back numbers left with the answering service (obtained by the previously authorized wire interceptions) were called back from 914-794-0960 within minutes on the same day. (Second Amaditz Aff. ¶¶ 9-13).

30. Amaditz set forth in the affidavit transcripts of recently intercepted conversations to illustrate how changes in the line, that is, the point spread or odds on a sporting event, were received at the answering service by Scialabba from a "Mr. Star," were relayed to Loewinger or Wertheimer and were then passed on to Leventhal. The affidavit also contains transcripts of other conversations demonstrating the operation of the answering service in the gambling operation and showing the connection between Loewinger/Wertheimer in Monticello and Finerow/Frielich in Ellenville and the connection between Loewinger/Wertheimer and Leventhal. (Second Amaditz Aff. ¶¶ 14-17).

31. Amaditz further stated in the affidavit that pursuant to Judge Griesa's order many conversations had been intercepted between January 5, 1977 and January 18, 1977 on telephone numbers 914-647-4312 and 914-647-3442 that demonstrated the exchange of line information and the laying off of bets among Finerow, Frielich, Melavsky and several other persons on a daily basis. (Second Amaditz Aff. ¶ 18). In addition, at least seventy incoming calls were intercepted from Loewinger or Wertheimer to Leventhal over telephone number 914-794-8026 that indicated that Leventhal was acting as a partner in the Loewinger/Wertheimer bookmaking operation; and there were calls between Finerow/Frielich and Loewinger/Wertheimer discussing various

A 76

aspects of the gambling operation, such as the laying off of bets, account balances, specific bettors and line information. (Second Amaditz Aff. ¶¶ 19-20). As he had done in the December 30, 1976 affidavit, Amaditz also stated the results of additional surveillance of Finerow and Frielich entering and exiting the Country Club Arms apartments during the standard bookmaking hours. (Second Amaditz Aff. ¶ 21).

32. Amaditz also sets forth information from two reliable confidential informants, identified as Informant Number 1 and Informant Number 2. Informant Number 1, who had been furnishing information to the FBI concerning gambling offenses for more than six months, was in contact with agents on a bi-weekly basis, and the information he had given was corroborated, always proved accurate, and resulted in three arrests and three convictions for gambling violations. (Second Amaditz Aff. ¶ 22). Informant Number 2 had been furnishing information to the FBI for more than a year, and the information he had given, which resulted in at least six arrests and convictions for gambling violations, was corroborated by independent investigation and has always proved to be accurate. (Second Amaditz Aff. ¶ 23).

33. Amaditz stated that he was informed by Informant Number 1, a personal acquaintance of Frielich, that he placed wagers with Frielich on sporting events at telephone numbers 914-647-3442 and 914-647-3412 as recently as January and February 1977. (Second Amaditz Aff. ¶ 22). Informant Number 2 advised Amaditz that in mid-February 1977 Melavsky told him that he, Melavsky, continued to accept wagers on horse race and sporting events. (Second Amaditz Aff. ¶ 23).

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34. As reflected in the five, ten and fifteen day reports filed with the Court, approximately 578 gambling related conversations were intercepted on telephone number 914-794-0960 between March 9, 1977, when Judge Bryan signed the 20-day order, and March 23, 1977 which was the last day included in the fifteen day report filed with the Court.

Minimization

35. In order to minimize the likelihood of intercepting non-relevant conversations, Amaditz proposed in the affidavit for each order that in addition to customary minimization procedures interception of wire communications would be carried out only during normal betting hours as determined from the advice of informant bettors, from the knowledge and experience of the agents, and from physical surveillance. (First Amaditz Aff. ¶ 45; Second Amaditz Aff. ¶ 24).

Need for Interception

36. The affidavits in support of the applications for orders from Judge Griesa and Judge Bryan each contained detailed descriptions of both the investigative procedures already employed and the limitations of such procedures in successfully concluding the investigation.

37. Each of the Amaditz affidavits accompanying the applications for the orders described at length the fruits of the investigation at the time of each application. In addition to describing the fruits of the investigations, each affidavit explained why interception of wire communications would be the only effective investigative procedure to achieve the goals of the investigation.

38. Amaditz stated in the affidavits that the confidential informants from whom information had been obtained in this investigation would be unavailable for use

by the Government because they were unwilling to testify or have their identities disclosed for fear of retribution. (First Amaditz Aff. ¶ 48; Second Amaditz Aff. ¶ 27).

39. Continued physical surveillance alone, the affidavits stated, would not establish participation in the operation of the illegal gambling business beyond a reasonable doubt. At best, this would provide only corroborating observation; at worst, the suspicions of the suspects in these relatively small towns would be aroused rendering ultimate detection more difficult. (First Amaditz Aff. ¶ 49; Second Amaditz Aff. ¶ 28).

40. Drawing on his own experience and that of other agents of the FBI, Amaditz stated in the affidavits that gambling raids and searches have not in the past resulted in the evidence necessary to prove gambling offenses because gamblers frequently do not keep permanent records and any records that are kept do not reveal the details of the lay-off operation, or the actual identities and roles of the participants. (First Amaditz Aff. ¶ 50; Second Amaditz Aff. ¶ 29).

41. Amaditz further stated in the affidavits that he was convinced that investigative contact with bettors would prove unproductive in this case and would only alert the subjects to the existence of the investigation. (First Amaditz Aff. ¶ 51; Second Amaditz Aff. ¶ 30).

42. Again drawing on his experience and that of other FBI agents knowledgeable in sports gambling operations, Amaditz stated that covert operations to infiltrate this gambling organization would not succeed. Amaditz pointed out that a previous attempt by the FBI to infiltrate one operation involved in these orders, the Loewinger operation, had previously failed in 1973. (First Amaditz Aff. ¶ 52; Second Amaditz Aff. ¶ 31).

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43. Amaditz also explained that telephone toll records would not aid in establishing the offenses because they do not reveal the nature or purposes of the contacts and because calls placed within the local calling area involved in this case would not be reflected. (First Amaditz Aff. ¶ 53; Second Amaditz Aff. ¶ 32).

44. Amaditz further discussed the reasons that subpoenaing individuals known to be involved in this operation to a grand jury would be unsuccessful, since they would likely decline voluntarily to testify. Grants of immunity were considered not to be a viable alternative because sufficient facts were not available from this investigation to measure the truthfulness of compelled testimony and because insufficient knowledge of this particular gambling operation made decisions on grants of immunity impossible. (First Amaditz Aff. ¶ 54; Second Amaditz Aff. ¶ 33).

45. Amaditz also pointed out that the use of pen registers without court-ordered electronic surveillance was not an available alternative. (First Amaditz Aff. ¶ 55; Second Amaditz Aff. ¶ 34).

46. Amaditz further explained in the affidavit in support of the March 9, 1977 application that this additional wire interception was necessary as the only effective means of obtaining evidence of gambling activity by the two principal members of the gambling operation under investigation, Loewinger and Wertheimer. As he had earlier in the affidavit, Amaditz pointed out that all callers were carefully screened by the answering service

and that it was clear from toll records and independent investigation that a substantial amount of gambling activity was taking place over the telephone number 914-794-0906. (Second Amaditz Aff. ¶ 35).

(s) Kenneth V. Handal

KENNETH V. HANDAL
Assistant United States Attorney

Sworn to before me this *KVH*
day of September, 1977.

MARIA A. TERAZIAN
Notary Public, State of New York
No. 314521871
Qualified in New York County
Term Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA :

-against-

MEMORANDUM
DECISION

ROBERT LOEWINGER a/k/a "Bobby",
a/k/a "Goo Goo"; NORMAN
WERTHEIMER a/k/a "Normie",
SAM LEVENTHAL a/k/a "Sam the Cop",
HARRY FINEROW, LEWIS A. FRIELICH
a/k/a "Larry", LAWRENCE PUTZER
a/k/a "Larry", MORRIS MELAVSKY
a/k/a "Moe", MAC FENSTER, RAY ADAMIAK,
WILLIAM DeMASE a/k/a "Bill", and
LESTER FINE a/k/a "Les",

77 Cr. 426

... Defendants. :

----- X

CANNELLA, D.J.:

Motions by defendants Loewinger, Leventhal,
Melavsky, Finerow, Putzer, Frielich, Adamiak, DeMase and
Fine, to suppress the contents of intercepted wire commun-
ications, Fed. R. Crim. P. 41(f); 18 U.S.C. § 2518(10)(a),
are denied. ^{1/}

^{1/} There being no controverted material issues of fact,
the holding of a hearing is unnecessary. Defendants'
conclusory claims of illegal wiretapping have been refuted
by Government affidavits. See, e.g., United States v. Van
Orsdell, 521 F.2d 1323, 1325 (2d Cir. 1975), cert. denied,
423 U.S. 1059 (1976).

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Motions by defendants Fenster and Melavsky to dismiss the indictment, are denied.

Motion by defendant Melavsky for production of grand jury minutes, is denied.

Motions by defendants Leventhal, DeMase and Fine, to suppress certain unidentified items seized on March 23, 1977, are denied.

WIRETAP EVIDENCE

Moving defendants claim that the district court erred in issuing the wiretap orders of December 30, 1976^{2/} and March 9, 1977 because the Government failed to comply with the provisions of 18 U.S.C. § 2518 regarding probable cause and particularized need for the electronic surveillance. The Court finds instead that the Government made a more than sufficient showing on all counts.

Probable Cause

In order for a judge to issue a wiretap order, he must find, inter alia, that there is probable cause to

^{2/} The gist of defendants' motions concern the validity of the December 30, 1976 order. There is no real dispute that, on the basis of the March 9 affidavit, there was probable cause for the issuance of the second order. Defendants, of course, contend that the March 9 affidavit should be stricken since its contents were derived from interceptions authorized by the December 30 order.

believe "that an individual is committing, has committed, or is about to commit" one of certain enumerated offenses. 18 U.S.C. § 2518(3)(a). One such offense concerns the operation of an illegal gambling business, 18 U.S.C. § 1955. See 18 U.S.C. § 2516(1)(c). Thus, in order to have authorized the interception of wire communications, the issuing judges must have found probable cause to believe the existence of an "illegal gambling business," as that term is defined in 18 U.S.C. § 1955(b)(1). But see 18 U.S.C. § 1955(c).

On the basis of an affidavit by F.B.I. Special Agent Amaditz, Judge Griesa signed the wiretap order of December 30, 1976; on the basis of a subsequent affidavit by Agent Amaditz, in addition to the five, ten and fifteen day reports filed with the Court, Judge van Pelt Bryan signed the March 9, 1977 order. "[T]he fact that the issuing judge[s] found probable cause is itself a substantial factor tending to uphold the validity of the order[s] so issued." *United States v. Becker*, 334 F. Supp. 546, 549 (S.D.N.Y. 1971) (Weinfeld, J.), aff'd, 461 F.2d 230 (2d Cir. 1972), vacated on other grounds, 417 U.S. 903 (1974). Additionally, rather than scrutinizing each individual statement contained in a supporting affidavit,

the court should view the affidavit "as a whole and 'in a practical and commonsense fashion.'" *United States v. Steinberg*, 525 F.2d 1126, 1130 (2d Cir. 1975), cert. denied, 425 U.S. 971 (1976), quoting S. Rep. No. 1097, 90th Cong., 2d Sess., reprinted in [1968] U.S. Code Cong. & Ad. News 2190.

As part of their argument that probable cause did not exist for the issuance of the orders, defendants claim that the informants' reliability was not sufficiently established. The Court disagrees.

The December 30 affidavit established the reliability of the informants through past furnishings of truthful information and through corroboration of their present information by both other informants and government personnel. This is sufficient, e.g., *United States v. Esposito*, 423 F. Supp. 908, 911 (S.D.N.Y. 1976) (Weinfeld, J.), and distinguishes the situation from "a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." *Spinelli v. United States*, 393 U.S. 410, 416 (1969).

Defendants next argue that the December 30 affidavit did not establish probable cause to believe that an "illegal gambling business" existed. Section

1955(b)(1) defines this term to mean

a gambling business which--

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

(Emphasis added). Subdivision (c) of section 1955, however, provides that

[i]f five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

Thus, in order to uphold the wiretap orders of December 30, 1976 and March 9, 1977, the Court must find that there was probable cause to believe: (1) that five or more persons were involved in a single gambling operation; and (2) that the business was in operation for at least two

successive days. In determining the correctness of Judge Griesa's finding, the Court may draw reasonable inferences from the facts and circumstances contained in the affidavit in support of the warrant, see United States v. Williams, 459 F.2d 909, 913 & n.4 (6th Cir. 1972). In this regard, the Court is mindful that "[p]robable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction." Adams v. Williams, 407 U.S. 143, 149 (1972).

To comply with the five-person requirement, it was not necessary to show that five or more persons acted contemporaneously so long as each participated at some time during the operative period. See United States v. Marrifield, 515 F.2d 877 (5th Cir.), cert. denied, 423 U.S. 1021 (1975). The December 30, 1976 affidavit of Agent Amaditz establishes three interlocking segments of a widespread gambling network in which more than five persons were involved. For the purpose of simplifying the document, Amaditz called these segments the Loewinger operation, the Leventhal operation and the Melavsky; operation. Informant information and physical surveillance showed cooperation among the three segments during a substantial period of time leading up to and including

December of 1976.^{3/} This included information as to laying off of bets between members of different segments of the business. See, e.g., United States v. Thomas, 508 F.2d 1200, 1205 (8th Cir.), cert. denied, 421 U.S. 947 (1975); United States v. DeCesaro, 502 F.2d 604, 611 (7th Cir. 1974).

Accordingly, the Court finds that the December 30, 1976 Amaditz affidavit establishes probable cause to believe that five or more persons were involved in a single gambling operation.

There is also ample support in the first Amaditz affidavit for the finding that the gambling business operated for at least two successive days. This triggers the statutory presumption of probable cause that the operation had gross revenue exceeding \$2,000 in any single day. 18 U.S.C. § 1955(c); United States v. Fino, 478 F.2d 35, 37 (2d Cir. 1973), cert. denied, 417 U.S. 918 (1974).

Particularized Need

Moving defendants argue, alternatively, that

^{3/} The Court therefore rejects the claim that the staleness of the information contained in Amaditz's affidavit precludes a finding of probable cause.

the December 30 Amaditz affidavit failed to establish the Government's particularized need to intercept wire communications. Section 2518(1)(c) of Title 18 provides that a wiretap application must include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." This does not mean, however, that electronic surveillance must be the Government's last resort. See United States v. Fury, 554 F.2d 522, 530 (2d Cir. 1977). The Government must merely indicate the basis of their belief that, under the particular circumstances, other investigative techniques will not succeed.

The Court finds that the Government has met its burden in this regard. The December 30, 1976 affidavit sets forth, to indicate the difficulty with alternative investigatory procedures, such factors as: (1) the unavailability of informants to testify because of fear; (2) the fruitlessness of continued physical surveillance; (3) the potential danger of direct contact with the suspects; and (4) the previous failure to infiltrate the gambling operation. Additionally, informant and other information disclosed the participants'

dependence on telephonic communications for the operation of their business. See *United States v. Steinberg*, 525 F.2d 1126, 1130 (2d Cir. 1975), cert. denied, 425 U.S. 971 (1976). These statements meet the requirements of § 2518(1)(c).

It is also argued that the second wiretap order should not have been issued because the first order had achieved its objectives. The Court disagrees. The March 9, 197 Amaditz affidavit states the necessity of continued electronic surveillance due to the manner in which Loewinger and Wertheimer operated.

SUFFICIENT EVIDENCE TO INDICT

Defendants Fenster and Melavsky claim that there was insufficient evidence before the grand jury to indict them. Melavsky also requests an order permitting him to inspect the grand jury minutes. The applications are denied in all respects.

The Supreme Court has stated that "an indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence" *United States v. Calandra*, 414 U.S. 338, 345 (1974); accord, *Costello v. United States*, 350 U.S. 359, 362-63 (1956). This

well-established principle precludes defendants' first request. The alternative reasons pressed by Melavsky for dismissal of the indictment are totally unsubstantiated.

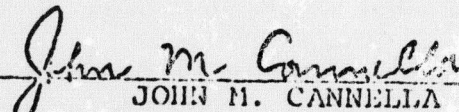
Melavsky's application to inspect the minutes of the grand jury proceedings is foreclosed by Fed. R. Crim. P. 6(e) in that the defendant has not established a particularized need. See United States v. Weinstein, 511 F.2d 622, 627 (2d Cir.), cert. denied, 422 U.S. 1042 (1975).

ITEMS SEIZED MARCH 23, 1977

Moving defendants request a hearing on the admissibility of evidence seized pursuant to search warrants executed on March 23, 1977. There is no indication, however, of the basis for the motion. This being the case, defendants' request for a hearing on this issue is denied.

Accordingly, the instant motions are denied.

SO ORDERED.


JOHN M. CANNELLA

United States District Judge

Dated: New York, N.Y.
October 6, 1977.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 UNITED STATES OF AMERICA :

5 vs. : 77 Cr. 426

6 ROBERT LOEWINGER a/k/a "Bobby" :
7 a/k/a "Goo Goo", et al., :

8 Defendants. :
9 - - - - - x

10 October 14, 1977,
11 10 A.M.

12 Before:

13 Hon. John M. Cannella,
14 District Judge.

15 Appearances:

16 Robert B. Fiske, Jr., Esq., United States Attorney,
17 For the Government,

18 By: Kenneth V. Handal, Esq.,
19 Ms. Denise Cote, Esq.,
20 Assistant U.S. Attorneys.

21 Louis R. Rosenthal, Esq.,
22 Attorney for defendant Loewinger,
23 (Also appearing for Guy T. Parisi, Esq., for
24 defendant Wertheimer)

25 Richard Rosenkranz, Esq.,
Attorney for defendant Leventhal.

Thomas Hanlon, Esq.,
Attorney for defendants Finerow, Frielich and
Putzer.

Robert M. Rosen, Esq.,
Attorney for defendant Fenster.

Bryan F. Levinson, Esq.,
Attorney for defendants DeMase and Fine.

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2 (Case called)

3 MR. HANDAL: Government is ready.

4 (All ready except Melavsky and Adamiak.)

5 THE COURT: I understand there is an application
6 on behalf of some of the defendants. We will take them
7 in the order of the indictment at this time.

8 Give me the indictment.

9 We are talking at the present time about
10 Robert Loewinger.

11 MR. ROSENTHAL: Yes, your Honor. There will be
12 a disposition in this matter, but I request at this time
13 a bench conference with the U.S. Attorney.

14 Perhaps the other attorneys will want to come
15 up. We can probably do it all at the same time.

16 THE COURT: Fine.

17 Rather than keep other defendants here who are
18 not going to make a disposition -- are there any that
19 are not going to make a disposition? Amongst the lawyers
20 do you know --

21 MR. HANLON: I have been on trial the last
22 two weeks. I discussed it with Ms. Cote and indicated
23 to her that the first thing Monday morning, if it is
24 agreeable to the Court, to indicate what our position
25 would be.

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2 THE COURT: There is no need for you to wait
3 then.

4 MR. HANLON: Very well, your Honor.

5 THE COURT: You can wait if you want to, but it
6 seems to me that if that is your position and you need
7 time until Monday, which one is this?

8 MR. HANLON: Putzer, Frielich and Finerow.

9 THE COURT: As to those you are then asking for
10 an adjournment until Monday?

11 MR. HANLON: Yes, sir.

12 THE COURT: Is there any objection to that?

13 MR. HANLON: No, your Honor.

14 MR. COTE: The government has no objection,
15 your Honor, to Mr. Hanlon informing us Monday morning
16 what the disposition will be as to his three clients.

17 THE COURT: Present bail continued.

18 MR. HANLON: I would like to sit in on the
19 applications of the others, if I may?

20 THE COURT: You may.

21 Is there anybody else that is in the same
22 position?

23 Do I understand that the rest we are going to
24 dispose of their matters?

25 MR. ROSENTHAL: Yes.

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2 THE COURT: We might as well go in the robing
3 room and be more comfortable.

4 (In the robing room.)

5 MR. ROSENTHAL: I represent Robert Loewinger.
6 I am also appearing today for Mr. Wertheimer in lieu
7 of Mr. Guy Grese who is otherwise engaged. I discussed
8 the matter with Ms. Cote and Mr. Handal and there is an
9 offer of letting both defendants who I represent today
10 to plead to Count 2 of the indictment. They are in favor
11 of this.

12 I did discuss today with Ms. Cote a conditional
13 plea with respect to pleading guilty on the condition
14 that if we take an appeal to the Court of Appeals on your
15 decision in the wiretap orders--

16 THE COURT: You preserve your rights.

17 MR. ROSENTHAL: Yes. I don't know whether
18 she will object to that. She said she was not in favor
19 of it, but she would check with her office to see whether
20 we could do this.

21 MS. COTE: Your Honor, though there have
22 been discussions regarding pleas in this case for a
23 period of days, if not weeks, the first time that the
24 government has been approached with regard to this
25 conditional plea was this morning and both Mr. Handal and

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2 I believe that it would be preferable for us to contact
3 someone else in our office before we give an answer
4 with respect to this request on the evidence of the plea.

5 THE COURT: Can you do it now?

6 MS. COTE: Yes, we can.

7 THE COURT: We will recess until she gets
8 an answer.

9 Is there anything else you want to tell me?

10 MR. HANDAL: Your Honor, in the event, I
11 haven't discussed this with my clients, I presently and
12 for the last few weeks have been trying a case and the
13 court had adjourned today to return to Harrisburg
14 to attempt to do some work on its own desk. The government
15 has in that case 60 witnesses. In two weeks of trial
16 we have gotten through 14. The original estimated time
17 of trial was four to six weeks. It is an extremely
18 complicated case, the most complicated I have ever been in
19 and it now looks like it might be substantially longer
20 than that.

21 In the event I understand, the Court was also
22 going to set a trial date today, if that was necessary,
23 in the event that conferences with my clients would lead
24 to the maintenance of a not guilty plea, what would be
25 the Court's attitude concerning a trial date?

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2 THE COURT: Well, we have the Speedy Trial Act.

3 MR. HANLON: We would waive that.

4 THE COURT: Some of those waivers are not
5 recognized by appellate courts.

6 MR. HANLON: The waiver has to be in the language
7 of the statute and it is not an easy thing to come to.

8 THE COURT: We have had so many cases where the
9 judge, for example, I don't know if you know the case,
10 but it is an income tax case, and the judge opened court
11 and said, "All right, let's go on with the case" and when
12 the case started some of the people who were witnesses
13 said, "You know, we really don't know what this is about
14 and we don't know why we are called here" and the judge
15 said, "We will put it over and we will start the case
16 next week."

17 No good. They wouldn't take it. They said even
18 though the judge initiated it and even though he said,
19 you are going to take the stand and testify and maybe
20 you are going to incriminate yourself, do you know what
21 you are doing here today?

22 And the guy says, "No, I am going to say he
23 bought six silk shirts." It was one of these tax cases
24 and that is all he is going to do.

25 The judge said, "Go home and talk to your

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2 lawyer and see if you will incriminate yourself." They
3 said, no, they can't extend the time for that. The judge
4 had no right to do that.

5 MR. HANLON: That is a shocking ruling.

6 THE COURT: How much time have you got here
7 for the speedy trial?

8 MR. HANDAL: Your Honor, the latest date the
9 trial should commence would be about December 3rd.

10 THE COURT: I would have to do it within that
11 limit and that wouldn't help you unless you got some other
12 counsel to take the case for you.

13 MR. HANLON: Well, that would be about six weeks,
14 I guess, and we may wind up by then. What I am saying
15 is 60 government witnesses with 14 --

16 THE COURT: I would have to try it within that
17 December 5th limit. That far I will go with you, but
18 further than that I can't.

19 MR. HANLON: Thank you.

20 THE COURT: Anybody else have a problem?

21 MR. HANLON: On Monday morning we may indicate
22 to you something different.

23 MR. ROSENTHAL: The only other problem is
24 right now I am currently engaged with Judge Thompson in
25 the Supreme Court in Brooklyn. I told him I would be

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2 back, hopefully, by 11:30, if possible.

3 THE COURT: Judge Thompson is about the best
4 friend I have and so I think we can take your man right
5 away and get rid of him and then you can go right over
6 there.

7 MR. LEVINSON: When it comes down to a breakdown
8 between federal and state judges, I don't mince words
9 because I have already been removed from state courtrooms
10 to federal benches. I am taking a plea, I always have
11 a problem when I am taking a plea because I am always
12 looking ahead to sentence and, of course, these are the
13 questions that come up from the clients and the question
14 is, in the federal statute where you don't have any
15 method of breaking down and you don't have any method of
16 discussing, it is very hard to discuss this point with
17 clients and they say, if I lose the case, am I not in the
18 same position? You have to talk to them about your ex-
19 perience through the years.

20 I just wanted to know, quite frankly, your Honor,
21 and I don't care if you tell me that is improper, are
22 you disposed to incarceration in any of these?

23 THE COURT: Sure, I am going to send them
24 all to jail. I am going to have them hung by the thumbs.

25 After 15 years in Special Sessions, you are

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2 asking me what my attitude is in a gambling case? Then
3 if you can't use your imagination, you can't use your own
4 judgment, I'm sorry, because my hands are bound under
5 federal law. I cannot discuss sentence at all.

6 MR. LEVINSON: I said I have to sit there and to
7 my client I said, no, I will open my mouth and let the
8 judge ream me.

9 THE COURT: Lawyers are always traditionally
10 being sent to jail and every place else because they are
11 insisting on doing things other people think they shouldn't
12 do. If you didn't like that, you should have taken up
13 orthodonty, which is very good and very profitable.

14 MR. LEVINSON: It is better on your feet, Judge.

15 THE COURT: Anybody else have any problems?

16 See if you can get an answer for them and
17 we will proceed from that point.

18 MR. HANLON: In the event that the answer is
19 a favorable one and the Court entertains this motion,
20 in the event on Monday when I contact Ms. Cote, we would
21 attempt to make the same application.

22 THE COURT: I assume she will ask for everybody.
23 She will not just ask for one.

24 MS. COTE: Yes, your Honor, and I think it
25 would take me approximately three to five minutes to get

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2 an answer.

3 MR. HANDAL: Have your chambers received any
4 communication from Mr. Loewinger or Mr. Crimmins? I had
5 no word that they were not going to be here today.

6 THE COURT: One has a heart attack and the other
7 one has the gout.

8 THE CLERK: One of them has gout and the other
9 has a heart condition, but I have it written down so
10 I will find it and show it to you.

11 MR. ROSENTHAL: I am before Judge William
12 Thompson.

13 THE COURT: Yes, I was wondering.

14 (Discussion off the record.)

15 (In open court)

16 MS. COTE: Your Honor, after consultation
17 with members of our office, the government has decided
18 to permit all defendants who are entering pleas today to
19 make those pleas conditional and, therefore, preserve
20 their right to appeal the denial of their suppression
21 motions. However, any pleas that are entered by defendants
22 who are present today at a later date will not be subject
23 to that same understanding.

24 THE COURT: Is that satisfactory?

25 MR. ROSENTHAL: It is to my clients, your Honor.

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2 MR. HANLON: It is not satisfactory to me, your
3 Honor. I would ask until Monday to discuss this case
4 with my clients and report on the matter.

5 THE COURT: I am sure they are not saying to you
6 that they are going to say no to you on Monday. They
7 simply are saying that they will consider your application
8 on Monday and tell you yes or no.

9 MS. COTE: No, your Honor, the government is
10 saying that the only pleas that will be subject to that
11 condition --

12 THE COURT: You already agreed to give them
13 until Monday to talk to his clients.

14 MS. COTE: Yes, that was prior, your Honor, to
15 any request by Mr. Hanlon for this kind of conditional plea.
16 We were interested in finally resolving this case and we
17 do see the uncertainty about trial and Mr. Hanlon has known
18 since July of the trial date set for October 11th.

19 THE COURT: It seems to me you can give him until
20 Monday. I don't think that is -- if he doesn't make up
21 his mind by Monday, then all bets are off.

22 MS. COTE: Well, your Honor, the government
23 is unwilling to extend it over past today.

24 THE COURT: How does the statute read?

25 MS. COTE: I believe it is a right established

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by case law in the Second Circuit.

THE COURT: In my case.

In Clemenko in the tax case where I took the plea to the gratuity, that was because I didn't agree to it, not because you didn't agree to it. That is the point I am making, so I am still in a position to allow him to go up, I believe, and I would give him until Monday, regardless of what your position is.

Don't depend on free advice.

Look, this is only until Monday. Who makes the judgment upstairs? Ask them if they will continue his until Monday. That is the final date.

MS. COTE: The decision was made by consultation between Daniel Beller, Mr. Handal and myself after Mr. Beller talked with Audrey Strauss, who is the chief appellate attorney. Given the understanding of the issues in this case and the feeling of the government that any appellate issue would be a frivolous one and that merely granting the right of conditional plea at all in this kind of case is unusual for the government--

THE COURT: Well, it wouldn't be any less frivolous on Monday than today, would it?

MS. COTE: The only reason we are willing--

THE COURT: It almost smells of coercion to me.

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2 MR. HANLON: To be very frank, the plea would
3 at least, as you say, I think a plea entered under these
4 circumstances were not a great amount of time is being
5 asked --

6 THE COURT: I can't mandamus them. I know what I
7 can do and what I do I say now on the record that I
8 would give the right to appeal. I think I have the right
9 to do it.

10 MS. COTE: Your Honor, it is not my understanding
11 that the three defendants who Mr. Hanlon represents will,
12 in fact, be pleading on Monday.

13 THE COURT: There is a liklihoc and if they
14 don't plead on Monday, all that happens is that all bets
15 are off and there is no more being able to plead conditionally.

16 MS. COTE: So the guilty pleas would have to be
17 entered on Monday?

18 THE COURT: On Monday, otherwise all bets are off
19 of that kind.

20 MR. HANLON: Your Honor, although I have known
21 ladies to change their mind, when I originally discussed
22 this with Ms. Cote, I will be on trial next Monday, Tuesday,
23 Wednesday and Thursday, I think I explained that to Ms.
24 Cote, in the federal court in Scranton. I will be free
25 on Friday.

102

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2 What I thought I would do is call her first thing
3 Monday morning and indicate to her whether we were going
4 to plead or if we were going to maintain our present plea
5 and then on Friday --

6 THE COURT: Mr. Hanlon, your defendants are
7 here, are they not?

8 MR. HANLON: They are, yes.

9 THE COURT: I suggest what you do is talk it
10 over with them and come to a judgment now and if you can't
11 by the end of the day, well then, the point will be that
12 the offer will be withdrawn by the government. I will
13 give you until the end of today to make up your mind.

14 MR. HANLON: It was my understanding that what
15 was desired by the government was information from me on
16 Monday morning as to whether there was going to be a plea
17 or not next Friday.

18 MS. COTE: Your Honor, we are not interested
19 in delaying the pleas in this trial any longer and we
20 are willing to abide by your Honor's decision you just
21 enunciated to give Mr. Hanlon the entire day today to
22 conference with his clients and enter the plea or decide
23 not to.

24 THE COURT: Since you have them here, I think
25 you should be able to make a judgment at this time. You have

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2 had this case for some time and it would be a great con-
3 venience to them and to you not to have to come back
4 again Monday or Friday or any other day.

5 So I will give you as much time as you need
6 today until 5 o'clock to make up your mind and then at that
7 time you will have to make a judgment as to what you want
8 to do.

9 MR. HANLON: Thank you, your Honor.

10 MS. COTE: Thank you.

11 THE COURT: All right, we want to get you out
12 of here, right?

13 MR. ROSENTHAL: Yes.

14 THE COURT: All right, then what I plan to do is
15 this: Under the Code, Rule 11, Section 5, I believe,
16 of Subdivision C, it indicates that these defendants may
17 be sworn so that they may be then warned that if they say
18 anything that is not so and if they lie on the stand that
19 they can be subject to a charge of perjury, which is
20 separate and apart from the offense which they are intending
21 to plead guilty to here today.

22 So, what I intend to do at this time is to
23 have all the defendants who desire to plead guilty step
24 forward and be sworn in and then each of you sit in the jury
25 box alongside of your lawyer so that if you want to consult

1 with your lawyer, you can feel free to do so at any time.

2 Mr. Loewinger, will you come up and Mr. Wertheimer,
3 Mr. Leventhal, Mr. Fine, Mr. DeMase and Mr. Fenster.
4

5 You will have to swear them in like a jury.

6 (All named defendants sworn)

7 THE COURT: Will each of you take a chair and
8 leave a space for your lawyer so your lawyer can sit alongside
9 of you.

10 The court has before it an application on in-
11 dictment 77 Criminal 426 on behalf of certain defendants
12 to change a plea entered into heretofore of not guilty to
13 certain portions of the indictment and change that plea
14 to guilty.

15 Mr. Loewinger's case is to change his plea to
16 Count 2.

17 MR. ROSENTHAL: That's correct.

18 THE COURT: You want to change your plea as
19 far as Count 2 is concerned, right?

20 DEFENDANT LOEWINGER: Yes, sir.

21 THE COURT: Mr. Wertheimer, Count 2 also?

22 DEFENDANT WERTHEIMER: Yes, your Honor.

23 DEFENDANT LEVENTHAL: Yes, your Honor.

24 THE COURT: Mr. Fine, Count 2?

25 DEFENDANT FINE: Yes, your Honor.

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2 THE COURT: Mr. DeMase, Count 2?

3 DEFENDANT DeMASE: Yes, your Honor.

4 THE COURT: Lastly, Mr. Fenster, you want to
5 change your plea as to Count 1.

6 DEFENDANT FENSTER: Right.

7 THE COURT: That is what we are talking about.

8 Let me explain to you why I am having this dis-
9 cussion with you. The Federal Rules of Criminal Procedure,
10 Rule 11, require me to address you personally in open
11 court and to essentially find out three things.

12 First, are you acting voluntarily.

13 Secondly, do you know the nature of the charge
14 against you.

15 Thirdly, do you know what punishment you could
16 get as a result of taking such a plea.

17 That is the reason why I am asking these questions.

18 If at any time you want to consult with your
19 lawyer, do so. He is sitting alongside of you and do it
20 so that I can't hear you, privately. If at any time you
21 want me to explain anything about what's been going on
22 or what I have said about various sections of this code
23 or the events involved here, feel free to ask me any
24 questions you want.

25 Is there anyone among you defendants that has been

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forced or threatened in any way into taking this plea
here today?

If you just raise your hand or make a signal,
the reporter will indicate that that means you are not.
Raise your hand if you are not.

(All raise their hands.)

THE COURT: Are each of you pleading to this
case, changing your plea to this case today because you
yourself feel that you are guilty of this charge. If you
are, please raise your hand.

(All raise their hands.)

THE COURT: Do you understand that the nature
of the charge against you here is a charge based on federal
law indicating certain violations concerning what we would
loosely call colloquially gambling and that you are not
being charged here with a state offense or a violation of
any other offense, but one based on federal law on an
act passed by Congress. If you so understand, please raise
your hand.

(All raise their hands.)

THE COURT: Thank you.

The possible punishment. As to Count 2, what is
the scope of punishment for Count 2?

MR. HANDAL: The scope of punishment on Count 2

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2 is five years' imprisonment and/or of \$20,000 fine.

3 THE COURT: Do each of you understand that that
4 is the scope of punishment, that is the maximum punishment
5 that you can receive? If so, please raise your hand.

6 (All raise their hands except Fenster.)

7 THE COURT: Do you understand that there is no
8 mandatory sentence as far as this particular violation
9 is concerned? If so, raise your hand.

10 (All raise their hands except Fenster.)

11 THE COURT: Are any of you on probation or
12 parole to any court for any reason in the state court or
13 otherwise? If so, please raise your hand.

14 DEFENDANT DeMASE: Yes.

15 THE COURT: Give me your name.

16 DEFENDANT DeMASE: DeMase.

17 THE COURT: What are you on parole for or probation?

18 DEFENDANT DeMASE: Usury case, your Honor.

19 THE COURT: How much longer have you got to go?

20 DEFENDANT DeMASE: It is over.

21 MR. LEVINSON: Your Honor, it occurred almost
22 at the same time as this offense occurred and he has just
23 go on probation. The case terminated just a couple of weeks
24 ago and he has just commenced probation.

25 THE COURT: How long a probation term do you have?

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2 MR. DeMASE: Five years.

3 THE COURT: Do you realize it is possible for
4 the state people to claim that this is a violation of
5 the probation?

6 MR. LEVINSON: They did not and it is not
7 a violation of his probation.

8 THE COURT: You understand that there is -- do you
9 understand that if you were on probation or you were
10 on payroll at the time the offense was committed, then, of
11 course, they could charge you with having violated your
12 probation or payroll as a result of this, but your statement
13 is that this happened afterwards and, therefore, it doesn't
14 apply, right?

15 MR. LEVINSON: Yes, sir.

16 THE COURT: As to Count 1, Mr. Fenster, what is the
17 punishment for the conspiracy?

18 MR. HANDAL: Your Honor, that is five years
19 and/or \$10,000 fine.

20 THE COURT: Do you understand the possible
21 punishment, Mr. Fenster?

22 DEFENDANT FENSTER: Yes, sir.

23 THE COURT: You do. Do you understand that that
24 is the maximum punishment?

25 DEFENDANT FENSTER: Yes, sir.

109

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2 THE COURT: Do you understand also that there is
3 no mandatory punishment?

4 DEFENDANT FENSTER: Yes, sir.

5 THE COURT: You do, all right.

6 I assume most of you are married?

7 (Loewinger, DeMase, Leventhal and Fenster raise
8 their hands.)

9 THE COURT: What I am actually asking these
10 questions for is to ask you one final question so you will
11 realize what I am trying to find out. Have you had
12 sufficient time to think this over? Did you talk it over
13 with your wife, your family, your father, your mother
14 or anybody else you have confidence in and are you prepared
15 to go ahead at this time? Is there anyone that is not
16 prepared to go ahead at this time under those circumstances?
17 If so, raise your hand, otherwise keep them down.

18 I assume you are all prepared to go ahead.

19 How about your lawyer? Does anyone have a lawyer
20 appointed by the court?

21 Are you satisfied with your lawyer up to this
22 point, with the way he has handled your case? If not,
23 raise your hand.

24 Is there anyone that has had a drug problem,
25 been addicted to drugs and uses drugs?

110

2 Is there anyone that has ever been in a mental
3 institution or been treated by a psychiatrist or anybody
4 else of that kind, some doctor of some kind?

5 Do you realize that there are certain rights
6 you have which concern two areas at this time which I am
7 going to talk about. One is a speedy trial. The other
8 is a jury trial or a bench trial.

9 What are the speedy trial limits in this case?

10 MR. HANDAL: Your Honor, trial should commence
11 on or about December 1st.

12 THE COURT: All right. Do you understand that
13 if you plead guilty here today you are giving up your right
14 to a speedy trial which means that the government would
15 have to try your case before December 1st of 1977 and that
16 by taking a plea here today you will be giving up that right.
17 If you understand that, please raise your hand.

18 (All raise their hands.)

19 THE COURT: Now, do you understand that if you plead
20 guilty here today -- let me start this way. You have
21 already pleaded not guilty and what you are actually asking
22 me to do at this time is to allow you to change that plea
23 from not guilty to guilty in this particular count.
24 You have a right to persist in that plea, which you have
25 already made, and you have a right to have a trial by jury

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2 and at that trial you have a right to the assistance of
3 counsel.

4 You have the right to confront and cross-examine
5 all the witnesses against you and also to examine all the
6 evidence the government has against you that it brings
7 to the attention of the jury and you have a right not
8 to be compelled to incriminate yourself.

9 You have a right to have that jury pass on your
10 guilt or innocence and before you could be convicted all
11 12 jurors unanimously must agree that you are guilty of
12 the crime charged beyond a reasonable doubt.

13 As a matter of fact, even if you are convicted,
14 you have a right to proceed to appeal and if by that time
15 you are out of funds and you don't have any money, the
16 government will pay the expenses for the appeal and for
17 the lawyer.

18 Do each of you realize that if you plead guilty
19 here today, as you are offering to do, you will be giving
20 up those rights? You will be waiving your rights. If so,
21 please raise your hand.

22 (All raise their hands.)

23 THE COURT: All right. Do you also realize that
24 if you wanted to you could stand mute and say not a word
25 and the government would have to prove your guilt beyond

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a reasonable doubt before you could be convicted. Do you

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understand that and that you are giving up that right

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if you plead guilty here.

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(All raise their hands.)

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THE COURT: Do you also realize that if you felt

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that you wanted the judge to try the case rather than a jury,

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you would have a right to what is called a bench trial,

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which means a trial by the judge alone. If you understand

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that, please raise your hands.

11

(All raise their hands.)

12

THE COURT: Thank you.

13

Do you realize that if you plead guilty here

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today there will be no further trial of any kind so that

15

by pleading guilty you have waived all your rights to

16

a trial either by a jury or by the court itself. If so,

17

please raise your hand.

18

(All raise their hands.)

19

THE COURT: Now, I want to read you a part of

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the statute which I misquoted before. I said it was

21

Section 5 of Subdivision C. It is really Subdivision D

22

of the Code and this is the part where I told you that if

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I asked you any question and you lied then you could be

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charged with perjury. Here is the way it reads:

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It is 5 of Subdivision C, I correct myself.

113

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2 If you plead guilty and the court asks you questions
3 about the offense to which you have pleaded and if you
4 answer these questions under oath and you are all under
5 oath, on the record and a record is being made here and
6 in the presence of counsel, your lawyer is sitting alongside
7 of you, your answers may later be used against you in a
8 prosecution for perjury or false statement. Do you
9 understand that? If so, please raise your hand.

10 (All raise their hands.)

11 THE COURT: Thank you.

12 Mr. Loewinger, have any promises been made to
13 you as far as your sentence is concerned?

14 DEFENDANT LOEWINGER: No, your Honor.

15 THE COURT: Have any promises been made to you
16 of any kind?

17 DEFENDANT LOEWINGER: No, your Honor.

18 THE COURT: Now think. I want each of you to think
19 because you have got a lawyer, but after all it is like the
20 boxer, you know, the manager is standing in the corner
21 and he says, we can't lose this fight. Go in there, you
22 know, he gets the punches and the manager is on the outside
23 looking in and he never gets hit once, you know, maybe by
24 accident somebody might floor him, so your lawyer is not
25 going to jail, it is possible here, I don't know what is going

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2 to happen, but in any event you are the one that is going
3 to be punished. How many charges are there against you?

4 DEFENDANT LOEWINGER: Two counts, your Honor.

5 THE COURT: You want to plead to one count?

6 DEFENDANT LOEWINGER: Yes, your Honor.

7 THE COURT: What is going to happen to the other
8 one?

9 DEFENDANT LOEWINGER: The other one is supposed
10 to be dismissed.

11 THE COURT: Isn't that a promise?

12 DEFENDANT LOEWINGER: Right.

13 THE COURT: All right. Now you heard another
14 promise this morning that your lawyer asked for. Did you
15 hear him when he was talking?

16 DEFENDANT LOEWINGER: He reserved the right to appeal

17 THE COURT: That is another promise, right. Any other
18 promises?

19 He is only Edgar Bergen and you are Charlie
20 McCarthy and it should be the other way around.

21 All right, then, you understand that what is going
22 to happen if you plead guilty is on the day of sentence
23 the government will not oppose a motion to dismiss count
24 number 1 as against you.

25 DEFENDANT LOEWINGER: Yes, your Honor.

115

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2 THE COURT: And also that they will not oppose
3 your lawyer taking an appeal on the judgment I made on the
4 search and seizure.

5 DEFENDANT LOEWINGER: Yes, your Honor.

6 THE COURT: You understand that, all right.

7 Now, you are charged in Count 2, just tell me
8 in a simple way what you say you did that you say constitutes
9 this crime that you want to plead guilty to.

10 DEFENDANT LOEWINGER: I made book with quite a
11 few people, took bets on the telephone for a period of time.

12 THE COURT: Okay.

13 Where did it happen?

14 DEFENDANT LOEWINGER: In the Village of Monticello.

15 THE COURT: Did it happen from about the 1st
16 of January, 1976, for how long about?

17 DEFENDANT LOEWINGER: It happened for quite
18 a while. It happened at least from the 1st of January, '76.

19 THE COURT: For how many months would you say
20 approximately?

21 DEFENDANT LOEWINGER: I'd say I am charged
22 with about three months.

23 THE COURT: Is that your best recollection of it?

24 DEFENDANT LOEWINGER: I think that it was
25 three months in the charges.

116

THE COURT: You knew you were doing an illegal act at the time?

DEFENDANT LOEWINGER: Yes, your Honor.

THE COURT: All right.

MS. COTE: Excuse me, your Honor, the government has a request to make with respect to the guilty pleas. We would request that the allocution in which the defendant states exactly what he did that is the basis for the guilty plea and also whether or not there are any promises that have been made to him, those two sections of the allocution be taken separately with each defendant and his counsel.

THE COURT: That is what I am doing.

MS. COTE: I'm sorry, your Honor, my request was that they be taken in camera with respect to each defendant and his counsel alone.

THE COURT: Is there any objection to that?

MR. ROSENTHAL: No objection.

THE COURT: All right, then suppose we take that inside and take the reporter inside.

(In the robing room)

THE COURT: We got to the point where you told me what you did and where you did it and now we get to the factual basis for the charge. What is your factual basis

117

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2 for the charge?

3 MR. HANDAL: Your Honor, would you like a
4 listing --

5 THE COURT: I only want to know what you have
6 got against him and why you say he should be convicted.

7 MR. HANDAL: Your Honor, the most important
8 evidence against the defendant Loewinger are tapes
9 authorized by this court. Those tapes run from approximately
10 January 4th until January 20th and they also run from
11 March 9th until March 23rd and Mr. Loewinger appears on those
12 tapes obtaining line information from various persons
13 for betting purposes.

14 He appears on those tapes giving line information
15 to two other defendants, Mr. Leventhal and Mr. Fenster.

16 He appears on those tapes accepting wagers from
17 bettors, accepting what are known as layoff bets from the
18 other defendants Finerow, Frielich, Melavsky, DeMase
19 and Fine.

20 He also was accepting bets from what are known
21 as writers within this operation, Messrs. Leventhal, Fenster,
22 and there are various contacts between Mr. Loewinger and
23 his answering service, which he used to operate this
24 gambling operation.

25 There are also layoff bets given to Mr.

118

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2 Loewinger from other unnamed bookmakers in New York,
3 Staten Island and Brooklyn. Mr. Loewinger also appears
4 on these tapes arranging settlements of bets.

5 If we were to go to trial an expert would testify
6 that the volume of Mr. Loewinger's business appears to be
7 up to \$20,000 per day and on an average of approximately
8 \$10,000 per day at least during the March taps.

9 Physical surveillance by various agents of
10 the Federal Bureau of Investigation which showed Mr.
11 Loewinger and Mr. Wertheimer together.

12 It would also show Mr. Loewinger at the locations
13 of various phones at the same time we have him on tapes
14 on these phones.

15 Physical surveillance would also show Mr.
16 Loewinger with Mr. Leventhal.

17 A search in this case on March 23, 1977, revealed
18 records for March 21st, 22nd and 23rd showing the bookmaking
19 operation run by Mr. Loewinger and an expert would testify
20 that Mr. Loewinger's operation was a bookmaking operation
21 and that he is not merely a bettor or a writer.

22 So there are tapes, there is physical surveillance,
23 there would be testimony at trial of bettors. There would
24 be testimony at trial of the person who ran Mr. Loewinger's
25 answering service.

119

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2 There would be physical evidence from the search
3 and there would be expert witnesses which would include
4 gambling experts.

5 THE COURT: Is that generally the way it works out?

6 DEFENDANT LOEWINGER: Yes, your Honor.

7 THE COURT: Let me ask you, counselor, did you
8 explore all the defenses that are possible to him? Let's
9 start with his mental condition. Was he coherent in his
10 responses to you?

11 MR. ROSENTHAL: Yes.

12 THE COURT: Nothing would suggest that he would
13 have a defense of mental defect?

14 MR. ROSENTHAL: Not at all.

15 THE COURT: Was there any search made of any
16 of his property?

17 MR. ROSENTHAL: When he was arrested.

18 THE COURT: Nothing that would help him? You
19 are still preserving your right to my ruling on the search
20 so that you are doing that knowing that to be the case.

21 MR. ROSENTHAL: It is basically my feeling,
22 since the wiretap evidence would come in, that he would
23 have no other choice.

24 THE COURT: No other defense you are aware of?

25 MR. ROSENTHAL: Right.

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2 THE COURT: Do you want to ask him anything
3 on the record?

4 MR. ROSENTHAL: No.

5 THE COURT: Do you want to ask him anything
6 on the record?

7 MR. HANDAL: Yes, your Honor.

8 First of all, what the volume of Mr. Loewinger's
9 business actually was.

10 THE COURT: We will get to that in the Probation
11 report. I don't see any need for that in the allocution
12 to go into that detail. I am talking about statutory
13 technicalities under Rule 11. Did I forget anything that
14 you are aware of?

15 MS. COTE: Your Honor, I would appreciate it
16 if you would ask the defendant whether or not he knew
17 his activities were in violation of state law.

18 THE COURT: As well as the federal law?

19 MS. COTE: Yes.

20 THE COURT: They are violations of both state
21 and federal law, you understand that?

22 DEFENDANT LOEWINGER: Yes.

23 THE COURT: If the state wanted to prosecute you,
24 they could prosecute you.

25 DEFENDANT LOEWINGER: After this?

121

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2 THE COURT: After this, yes. It is like a drug
3 case. For example, a fellow buys some drugs, he is violating
4 both the federal law and the state law so he could be
5 prosecuted by each, but --

6 MR. ROSENTHAL: There may be some problems
7 with collateral estoppel if they use the same thing to
8 which he is pleading guilty.

9 THE COURT: That is true, but the fact is that
10 it is both a state violation and federal violation. You
11 understand that.

12 MR. LOEWINGER: Yes, your Honor.

13 THE COURT: All right. The court finds that
14 this defendant is acting voluntarily with an understanding
15 of the nature of the charges against him. He also under-
16 stands the maximum punishment and whether or not there is
17 any mandatory punishment. He clearly is over the age of
18 26 and therefore the Adult Act applies. The court also
19 finds that there is a factual basis for the charge contained
20 in the indictment to which he desires to change his plea
21 from not guilty to guilty.

22 The court further finds that there are no
23 promises made as far as sentence is concerned. The
24 court finds that there is a promise made that at the time
25 of sentence the government will not oppose a motion made

122

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2 by defendant's counsel to dismiss Count 1 of the indictment
3 and also that they will not oppose and make as a point
4 on appeal that they have no right to appeal the ruling
5 of the court made in reference to the unlawful search
6 and seizure.

7 MR. ROSENTHAL: Your Honor, there is one more
8 promise that the U.S. Attorney will not recommend sentence.
9 Will not recommend what sentence the court should impose.

10 THE COURT: The court notes that that is also
11 a promise made by the government. They will take no
12 position at the time of sentence.

13 MS. COTE: That's right.

14 MR. HANDAL: May I just state that that is
15 with respect to a specific sentence. We do reserve
16 the right to bring to your Honor's attention what we
17 believe proof at trial would show.

18 THE COURT: You mean his relative position in
19 the operation?

20 MR. HANDAL: That's correct.

21 THE COURT: He knows that you are going to say that.
22 What he is saying is you are not going to say X years or
23 whatever.

24 MR. HANDAL: That's correct, your Honor.

25 THE COURT: Fine. The Clerk of the court is

123

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2 therefore directed to read Count 2 of the indictment
3 so that the defendant may change his plea thereto.

4 MS. COTE: Your Honor, if you so desire, the
5 government has no objection to postponing this section of the
6 allocution until all defendants have separately been inquired
7 of by your Honor.

8 THE COURT: It is a short thing, we might
9 as well let him go because he's got to go.

10 (The Clerk read Count 2 of the indictment to
11 the defendant Loewinger.)

12 BY THE CLERK: (Addressing defendant Loewinger)

13 Q Mr. Loewinger, do you understand the charge
14 I have just read?

15 A Yes, sir.

16 Q On Count 2, how do you plead?

17 A Guilty.

18 THE COURT: Investigation and sentence.

19 THE CLERK: November 22nd, Judge.

20 THE COURT: Is that convenient?

21 MR. ROSENTHAL: Yes. Your Honor, might I
22 ask, could we have a later date for sentence, perhaps even
23 the first of the year?

24 MS. COTE: Your Honor, I believe the speedy trial
25 plan for the circuit provides for sentencing 45 days after

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entry of a plea of guilty.

THE COURT: All right, we will give you the 45 days. What is that?

MR. ROSENTHAL: That would be the end of November.

THE COURT: Pick a date within the 45 days.

MR. ROSENTHAL: November 29th.

THE COURT: All right, November 29th.

Present bail conditions there being no objection.

MR. ROSENTHAL: Is there someone out to meet him from Probation or do I have to take him there?

THE CLERK: You have to take him downstairs.

10 o'clock, Judge, room 619.

THE COURT: Room 619, 10 o'clock.

(Defendant Loewinger left the robing room and defendant Wertheimer entered the robing room.)

MR. HANLON: Your Honor, if this examination is because of us, it is our intention to plead, to join in the pleas of the other defendants, so if it would speed things up to do it in open court --

THE COURT: We have a very small part of it here, just the factual basis. It is a little more comfortable table here. We will take them one at a time.

You are Norman Wertheimer, right?

DEFENDANT WERTHEIMER: Yes.

125

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2 UNITED STATES OF AMERICA

3 -v-

77 Cr 426
(JMC)

4 ROBERT LOEWINGER

5
November 29, 1977
6 10 a.m.

7 CANNELLA, J.

8 - - - -

9 (Case called; both sides ready.)

10 THE COURT: Are you Robert Loewinger?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you ready for sentence, Mr.
13 Loewinger?

14 THE DEFENDANT: Yes, sir.

15 BY THE COURT:

16 Q Do you know any legal reason why sentence should
17 not be pronounced at this time?

18 A No.

19 Q Is there anything you want to say or any evidence
20 you desire to produce in mitigation of sentence?

21 A No, your Honor.

22 THE COURT: Let the record indicate that the
23 presentence report was given to Mr. Rosenthal, the defendant's
24 counsel. I am sure you read it.

25 MR. ROSENKRANZ: Yes, your Honor. To be honest

126

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2 with you, Mr. Parisi, who is associated with me, came over
3 yesterday to read it. I was engaged in trial in the Supreme
4 Court and I still am, so he read it and gave me all the
5 information.

6 THE COURT: If you want to read it, you may.

7 MR. ROSENKRANZ: No, your Honor. I rely on Mr.
8 Parisi.

9 THE COURT: The presentence report contains 11
10 pages. It is dated November 18, 1977, and it is incorporated
11 into this proceeding by reference and made a part thereto.

12 I also have a number of letters which were sub-
13 mitted on his behalf and I similarly make them a part of the
14 record.

15 One is from the Men's Royal and Boy's Town,
16 Inc., signed by Mr. Feldman, the president, who knows him
17 for the last five years, where he has been employed in his
18 establishment there and finds him to be a good employee.

19 Another is from a Mrs. Brother. She has known
20 him for five years and she stopped in the store where he has
21 been employed, a clothing store, for many years.

22 The next one is from the Pine Sundry, signed
23 by Mr. Wohl, and he has indicated that he has known him from
24 his relationship with the Men's Royal Store and asks that
25 consideration be given on his behalf.

1 jbo-3

2 Another letter is from the South Falls Hebrew
3 Association, signed by the president Mr. Ingber, and he says
4 that all the congregation knows about this and they join in
5 indicating that he is a good member of the group and he has
6 contributed to all the charitable endeavors.

7 A letter from the American Laundry and Linen
8 Supply, signed by the president, who apparently shopped in
9 the store that he was a salesman in and speaks in his behalf.

10 A garageman by the name of Plotkin indicates he
11 has known him for six years and asks consideration and then,
12 lastly, a letter from a realtor, Mr. Cohen, who has known
13 him for about 20 years and speaks on his behalf.

14 I also have a financial statement which is made
15 a part of the record.

16 Lastly I have a letter from the defendant himself,
17 which I have already read and similarly make part of the
18 record.

19 I will hear you, Mr. Rosenkranz.

20 MR. ROSENKRANZ: Yes, your Honor.

21 Well, to start, I would like to speak about the
22 nature of the man. You have the report in front of you
23 and his lifestyle indicates he is not a high liver, doesn't
24 live high off the hog. His record would indicate that he
25 is a gambler; he was a gambler for many years. He has, I

1 jbo-4

2 think, 18 prior arrests.

3 THE COURT: Yes. There is one of them when I
4 was in Special Sessions. I am wondering whether or not by
5 happenstance I sentenced him at that time, in 1955.

6 THE DEFENDANT: I don't think so, your Honor.

7 THE COURT: It's right in front of me.

8 THE DEFENDANT: I was sentenced in absentee for
9 that one, I think.

10 THE COURT: I hope you don't mean by the standard
11 which used to be a practice at one time until they caught
12 up with it.

13 Let's see. Yes. Brooklyn Special Sessions,
14 August 15, 1955. I sat in Brooklyn and I sat in Special
15 Sessions at that time but that was not for gambling; that
16 was obscene prints and you got a suspended sentence.

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: But you don't remember me and you
19 don't think it was me?

20 THE DEFENDANT: I was in the federal thing at
21 that time.

22 THE COURT: Oh; federal. This is not federal.
23 This is Special Sessions.

24 THE DEFENDANT: No. I was away on another charge.
25 I was sentenced while I was away.

1 jbo-5
2 THE COURT: You were? All right.

3 MR. ROSENKRANZ: In any event, there is nothing
4 violent in his background except for one conviction for
5 assault and that arose out of practically a comedy of errors.
6 At the time, he was driving a laundry truck and pulled over
7 by a state trooper. Mr. Loewinger was trying to dispose of
8 any of the evidence at that time by eating the evidence,
9 basically, and the troopers had jumped on the running board
10 of the truck and Mr. Loewinger lost control of the truck --

11 THE COURT: The door of the truck hit the officer.

12 MR. ROSENKRANZ: Or whatever. It was nothing
13 intentional as to an assault or intentional assault. His
14 record of arrests would indicate, if anything, that he has
15 never attempted to bribe a police officer, pay off a police
16 officer or any of the authorities.

17 If he is supposed to be, as the government
18 contends, a higher-up in this operation, and you are familiar
19 with gambling operations, particularly having served in the
20 Special Sessions court, very few times the higher-ups get
21 arrested; especially this amount of times.

22 I would say that he has been working and he is
23 in the business up in Monticello and I believe at this time
24 hopefully he has finally learned his lesson with respect to
25 gambling. It is illegal. I am not going to excuse the crime.

1
2 The crime is on the books and the laws must be enforced.

3 THE COURT: There is some word that it is still
4 going on.

5 MR. ROSENKRANZ: Well your Honor, to my know-
6 ledge, and to be quite honest with you, I have never placed
7 a bet except at a racetrack and I couldn't recognize it if
8 it was going on.

9 I have visited his store up there and spent a
10 number of hours with him up there and I could not detect
11 any gambling activity at that time. It was during the summer
12 and he was doing business, selling clothing, children's
13 clothing, men's clothing at the store.

14 In fact, the business was quite thriving at
15 that time.

16 Gambling is a crime but, in mitigation of sent-
17 ence, it is a crime which is, I believe, a victimless crime
18 where he doesn't go to the gambler -- the gambler comes to
19 him. The people come to him, they call and place bets. It
20 is not a crime where, I believe, anybody is hurt and it's
21 a crime unfortunately that is going to continue until the end
22 of the world and, in taking all of this into account, your
23 Honor, I would ask you to be as lenient as possible.

24 MR. HANDAL: We have nothing to add to the
25 sentencing memorandum that we have submitted.

1 jbo-7

2 THE COURT: Well, there is a little dispute as to
3 whether the amount of money involved on a projected figure
4 was \$3,500,000 but the defendant says no; it was only a
5 million. Boy, when I think of the salaries that we have been
6 getting here until the recent great raise we got as federal
7 judges, the cavalier way in which a million dollars is men-
8 tioned sort of nonplusses me but, in any event, it's not my
9 practice to hector defendants.

10 You think he has turned around; I don't think so.
11 Frankly, as a matter of fact, I wouldn't be at all surprised
12 if this activity was still going on. He is a compulsive
13 gambler to start with. This is the way the thing started.
14 He himself was a gambler and then he figured, well, as long
15 as I am in it, I might as well get on the other end of this
16 thing, too, so even in his military career, he was setting
17 up crap games in the camps. This is a man that I don't think
18 will change and nobody is going to teach him a lesson because
19 this is the nature of the beast.

20 Of course, what is the main trouble with our end
21 of it at this point is that I agree that it's a shame that
22 so many things are going on all around him which are legal --
23 the OTB and everything else, and you can just walk down to the
24 Monticello track -- I think it's walking distance from where
25 he is -- and so, I can understand that but, on the other hand,

1 jbo-8

2 we still have to deter this organization of people who get
3 together -- and I know he claims not to be and there is no
4 evidence on the government's part that there is any organized
5 crime involved here, but there was an organization amongst
6 themselves.

7 They facilitated the laying of bets by
8 individuals. They laid off and he accepted the bets at the
9 other end, so there is an organization and this is what the
10 government is trying to discourage and Congress, of course,
11 is very concerned with this because, look at the punishment
12 they made for this. They made it five years and a \$20,000
13 fine. So, it's not a small matter as far as they are
14 concerned.

15 It is the judgment of the Court on indictment
16 77 Criminal 426, to which this defendant pleaded guilty to
17 Count 1, I believe -- Counts 1 and 2. He pleaded guilty to
18 both of them?

19 MR. HANDAL: He pleaded guilty to Count 2.

20 THE COURT: All right. The checkmark is only
21 against him; that's right. He is named in Count 1 and 2 but
22 he pleaded guilty to Count 2.

23 He is turned over to the custody of the Attorney
24 General or his duly authorized representative for a term of
25 imprisonment of two years. In addition thereto, he is fined

1 jbo-9

2 the sum of \$20,000, which shall be a committed fine.

3 Your motion as to Count 1?

4 MR. ROSENKRANZ: I would move to dismiss Count 1.

5 MR. HANDAL: No objection.

6 THE COURT: Granted.

7 MR. ROSENKRANZ: Might he be continued on bail
8 pending appeal?

9 THE COURT: What is the bail?

10 MR. HANDAL: \$10,000 personal recognizance bond.

11 THE COURT: He has roots up there. I don't think
12 he will run. I don't see a reason not to continue it.

13 You preserve your right under your agreement with
14 the government to appeal. That appeal must be taken within
15 ten days and should you fail to do that, you will loose your
16 right of appeal and, if you don't have any money at this time,
17 you can apply to the government so that the government will
18 pay the cost of appeal.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you understnad also that if
22 you want me to, I can direct the Clerk of the Court to file
23 a notice of appeal for you at this time? Do you want your
24 own lawyer to do it or do you want me to?

25 MR. ROSENKRANZ: I will file one, your Honor, this
26 morning.

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THE COURT: You are going to do it. Fine.

Thank you very much.

Pursuant to the agreement made between the parties at the time of the allocution of the sentence, the defendant's motion to dismiss Count is granted.

MR. ROSENKRANZ: Thank you, your Honor.

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Rec'd. 2/14/78
M. Raxenberg
for A. Strauss



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